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Laura V. May

THE

# REVISED CODE OF LAWS,

OF

## ILLINOIS,

ENACTED BY THE FIFTH GENERAL ASSEMBLY.

AT THEIR SESSION HELD AT VANDALIA, COMMENCING ON THE  
FOURTH DAY OF DECEMBER, 1826, AND ENDING  
THE NINETEENTH OF FEBRUARY,

**1827.**

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*PUBLISHED IN PURSUANCE OF LAW.*

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# DECLARATION OF INDEPENDENCE,

IN CONGRESS, JULY 4TH, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF  
AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires, that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent

should be obtained, and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies, at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others, to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependant on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others, to subject us to a jurisdiction, foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:—

For quartering large bodies of armed troops among us:

For protecting them by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us, without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas, to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power, to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress, in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They, too, have been deaf to the voice of justice, and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things, which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

## DECLARATION OF INDEPENDENCE.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:

## JOHN HANCOCK.

## NEW-HAMPSHIRE.

Josiah Bartlett,  
William Whipple,  
Matthew Thornton.

James Smith,  
George Taylor,  
James Wilson,  
George Ross.

## MASSACHUSETTS BAY.

Samuel Adams,  
John Adams,  
Robert Treat Paine,  
Elbridge Gerry.

DELAWARE.

Cesar Rodney,  
George Read,  
Thomas M'Kean.

## RHODE-ISLAND, &amp;c.

Stephen Hopkins,  
William Ellery.

## MARYLAND.

Samuel Chase,  
William Paca,  
Thomas Stone,  
Charles Carroll, of Carrollton.

## CONNECTICUT.

Roger Sherman,  
Samuel Huntington,  
William Williams,  
Oliver Wolcott.

## VIRGINIA.

George Wythe,  
Richard Henry Lee,  
Thomas Jefferson,  
Benjamin Harrison,  
Thomas Nelson, jr.  
Francis Lightfoot Lee,  
Carter Braxton.

## NEW-YORK.

William Floyd,  
Philip Livingston,  
Francis Lewis,  
Lewis Morris.

## NORTH-CAROLINA.

William Hooper,  
Joseph Hewes,  
John Penn.

## NEW-JERSEY.

Richard Stockton,  
John Witherspoon,  
Francis Hopkinson,  
John Hart,  
Abraham Clark.

SOUTH-CAROLINA.

Edward Rutledge,  
Thomas Heyward, jr.  
Thomas Lynch, jr.  
Arthur Middleton.

## PENNSYLVANIA.

Robert Morris,  
Benjamin Rush,  
Benjamin Franklin,  
John Morton,  
George Clymer,

GEORGIA.

Button Gwinnett,  
Lyman Hall,  
George Walton.

# ARTICLES OF CONFEDERATION,

## AND PERPETUAL UNION,

Between the states of *New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South Carolina, and Georgia.*

### ARTICLE I.

The style of this confederacy shall be, "THE UNITED STATES OF AMERICA."

### ARTICLE II.

Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States in Congress Assembled.

### ARTICLE III.

The said states hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade or any other pretence whatever.

### ARTICLE IV.

The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States (paupers, vagabonds and fugitives from justice excepted) shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state to any other state, of which the owner is an inhabitant: *Provided also, That no imposition, duties or restriction, shall be laid by any State on the property of the United States, or either of them.*

If any person guilty of, or charged with treason, felony, or other high misdemeanor, in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor, or executive power of the State from which he fled, be delivered up, and removed to the State, having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

## ARTICLE V.

For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the Legislature of each State shall direct, to meet in Congress on the first *Monday in November*, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emoluments of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech, and debate in Congress, shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

## ARTICLE VI.

No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person, holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any King, Prince or Foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress to the Courts of *France* and *Spain*.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United

## ARTICLES OF CONFEDERATION.

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States in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide, and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of *Indians* to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled; and then only against the Kingdom or State, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled; unless such State be infested by pirates; in which case, vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled, shall determine otherwise.

### ARTICLE VII.

When land forces are raised by any State for the common defence, all officers of, or under the rank of Colonel, shall be appointed by the Legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

### ARTICLE VIII.

All charges of war and all other expenses that shall be incurred for the common defence, or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State granted to, or surveyed for, any person, as such land, and the buildings and improvements thereon, shall be estimated according to such mode as the United States in Congress assembled shall, from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States, within the time agreed upon by the United States in Congress assembled.

## ARTICLE IX.

The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances: *Provided*, That no treaty of commerce shall be made, whereby the Legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures: *Provided*, That no member of Congress shall be appointed a judge of any of the said Courts.

The United States in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States, concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following:—Whenever the legislative or executive authority, or lawful agent of any state in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall in the presence of Congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear, and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without shewing reasons which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each state, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties

shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall, in like manner be final and decisive, the judgment or sentence and other proceedings, being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned: *Provided*, That every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection or hope of reward:" *Provided also*, That no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more states, whose jurisdiction, as they may respect such lands and the states which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the *Indians*, not members of any of the states: *Provided*, That the legislative right of any state within its own limits be not infringed or violated—establishing and regulating post-offices from one state to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "*A committee of the states*," and to consist of one delegate from each state; and to appoint such other committees and civil officers, as may be necessary, for managing the general affairs of the United States under their direction—to appoint one of their number to preside, *Provided*, That no person be allowed to serve in the office of president, more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying

the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective states, an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisitions shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men, so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled, but if the United States in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped, in the same manner as the quota of such state, unless the legislature of such State shall judge, that such extra number cannot be safely spared out of the same; in which case, they shall raise, officer, clothe, arm and equip, as many of such extra number, as they judge can be safely spared; and the officers and men, so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled.

The United States in congress assembled, shall never engage in a war, nor grant letters of marque and reprisal, in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof, relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

## ARTICLES OF CONFEDERATION.

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### ARTICLE X.

The committee of the states, or any nine of them, shall be authorised to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine states, shall from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the Congress of the United States assembled is requisite.

### ARTICLE XI.

Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

### ARTICLE XII.

All bills of credit emitted, moneys borrowed, and debts contracted, by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof, the said United States and the public faith are hereby solemnly pledged.

### ARTICLE XIII.

Every state shall abide by the determination of the United States in Congress assembled, on all questions which, by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter, be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every state.

And whereas, it has pleased the Great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorise us to ratify the said articles of confederation and perpetual union: KNOW YE, That we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and al. and singular the matters and things therein contained; and we do further solemnly plight and engage the faith of our respective constituents; that they shall abide by the determinations of the United States in Congress assembled, on all questions which, by the said con-

federation, are submitted to them; and that the articles thereof, shall be inviolably observed by the States we respectively represent; and that the union shall be perpetual.

In witness whereof, we have hereunto set our hands, in Congress.

Done at Philadelphia, in the state of Pennsylvania, the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the Independence of America.

*On the part and behalf of the state of New-Hampshire.*

Josiah Bartlett, John Wentworth, jr. Aug. 8, 1778.

*On the part and behalf of the state of Massachusetts Bay.*

John Hancock, Francis Dana,  
Samuel Adams, James Lovell,  
Elbridge Gerry, Samuel Holton.

*On the part and behalf of the state of Rhode Island and Providence Plantations.*

William Ellery, John Collins.  
Henry Marchant,

*On the part and behalf of the state of Connecticut.*

Roger Sherman, Titus Hosmer,  
Samuel Huntington, Andrew Adams.  
Oliver Wolcott,

*On the part and behalf of the state of New-York.*

Jas. Duane, Wm. Duer,  
Fra. Lewis, Gouv. Morris.

*On the part and behalf of the state of New-Jersey.*

Jno. Witherspoon, Nath. Scudder, Nov. 26, 1778.

*On the part and behalf of the state of Pennsylvania.*

Robt. Morris, William Clingan,  
Daniel Roberdeau, Joseph Reed, 22d July, 1778.  
Jona. Bayard Smith,

*On the part and behalf of the state of Delaware.*

Thos. M'Kean, Feb. 13, 1779, Nicholas Van Dyke,  
John Dickinson, May 5th, 1779.

*On the part and behalf of the state of Maryland.*

John Hanson, March 1, 1781, Daniel Carrol, do.

*On the part and behalf of the state of Virginia.*

Richard Henry Lee, Jno. Harvie,  
John Banister, Francis Lightfoot Lee.  
Thomas Adams,

*\* On the part and behalf of the state of North-Carolina.*

John Penn, July 21st, 1778, Jno. Williams.

Corns. Harnett,

*On the part and behalf of the state of South-Carolina.*

Henry Laurens, Richard Hutson,  
William Henry Drayton, Thomas Heyward, jun.  
Jno. Matthews,

*On the part and behalf of the state of Georgia.*

Jno. Walton, 24th July, 1778, Edwd. Langworthy.

Edwd. Telfair,

[**NOTE.**—From the circumstance of delegates from the same state having signed the articles of confederation at different times, as appears by the dates, it is probable they affixed their names as they happened to be present in Congress, after they had been authorised by their constituents.]

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## CONSTITUTION OF THE UNITED STATES.

WE, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

### ARTICLE I.

#### SECTION 1.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

#### SECTION 2.

1. The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of New-Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode-Island and Providence Plantations, one; Connecticut, five; New-

*York, six; New-Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North-Carolina, five; South-Carolina, five; and Georgia, three.*

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

### SECTION 3.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class, shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The vice-president of the United States shall be president of the senate; but shall have no vote, unless they be equally divided.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

### SECTION 4.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state, by the legislature thereof; but the congress may, at any time, by law, make or af-

ter such regulations, except as to the places of choosing senators.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

#### SECTION 5.

1. Each house shall be the judge of the elections, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

#### SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house, during his continuance in office.

#### SECTION 7.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

2. Every bill, which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the pre-

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sident of the United States; if he approve he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be re-considered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses, shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned, by the president, within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary. (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

### SECTION 8.

The Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:
2. To borrow money on the credit of the United States:
3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:
4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:
5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:
6. To provide for the punishment of counterfeiting the securities and current coin of the United States:
7. To establish post offices and post roads:
8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:
9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:
10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

## CONSTITUTION OF THE UNITED STATES. 17

11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years:
12. To provide and maintain a navy:
13. To make rules for the government and regulation of the land and naval forces:
14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:
15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress:
16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings:—and,
17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

### SECTION 9.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.
2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.
3. No bill of attainder, or ex post facto law, shall be passed.
4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.
5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.
6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time.
7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, with-

out the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

## SECTION 10.

1. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II.

## SECTION 1.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of

them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

## SECTION 2.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons, for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided, two-thirds of the senators present concur: and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies, that may happen, during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

#### SECTION 3.

1. He shall, from time to time, give to the congress information of the state of the union; and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

#### SECTION 4.

1. The president, vice-president, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

### ARTICLE III.

#### SECTION 1.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts, as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

#### SECTION 2.

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all

cases, affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

2. In all cases, affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places, as the congress may by law have directed.

#### SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The congress shall have power to declare the punishment of treason; but no attainer of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

### ARTICLE IV.

#### SECTION 1.

1. Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

#### SECTION 2.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state under the laws

thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

### SECTION 3.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

### SECTION 4.

1. The United States shall guaranty to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

## ARTICLE V.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

## ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII.

1. The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, *President,  
and deputy from Virginia.*

### NEW-HAMPSHIRE.

John Langdon,  
Nicholas Gilman,

### MASSACHUSETTS.

Nathaniel Gorham,  
Rufus King.

### CONNECTICUT.

William Samuel Johnson,  
Roger Sherman,

### NEW-YORK.

Alexander Hamilton.

### NEW-JERSEY.

William Livingston,  
David Brearly,  
William Patterson,  
Jonathan Dayton.

### PENNSYLVANIA.

Benjamin Franklin,  
Thomas Mifflin,  
Robert Morris,  
George Clymer,  
Thomas Fitzsimons,  
Jared Ingersoll,  
James Wilson,  
Gouverneur Morris.

Attest,

WILLIAM JACKSON, *Secretary.*

### DELAWARE.

George Read,  
Gunning Bedford, jun.  
John Dickinson  
Richard Bassett,  
Jacob Broom.

### MARYLAND.

James M'Henry,  
Daniel of St. Tho. Jenifer,  
Daniel Carroll.

### VIRGINIA.

John Blair,  
James Madison, jun.

### NORTH-CAROLINA.

William Blount,  
Richard Dobbs Spaight,  
Hugh Williamson.

### SOUTH-CAROLINA.

John Rutledge,  
Charles Cotesworth Pinckney,  
Charles Pinckney,  
Pierce Butler.

### GEORGIA.

William Few,  
Abraham Baldwin.

## AMENDMENTS TO THE CONSTITUTION.

## ARTICLE 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

## ARTICLE 2.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

## ARTICLE 3.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

## ARTICLE 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## ARTICLE 5.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

## ARTICLE 6.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

## ARTICLE 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

## ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## ARTICLE 9.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## ARTICLE 10.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

## ARTICLE 11.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

## ARTICLE 12.

1. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choos-

ing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president: a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

#### ARTICLE 13.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

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## RESOLUTION,

### DECLARING THE ADMISSION OF THE STATE OF ILLINOIS INTO THE UNION.

*Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled,* That, whereas, in pursuance of an act of Congress, passed on the eighteenth day of April, one thousand eight hundred and eighteen, entitled "An act to enable the people of the Illinois Territory to form a constitution and state government, and for the admission of such state into the union, on an equal footing with the original states," the people of said territory did, on the twenty-sixth day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity to the principles of the articles of compact between the original states and the people and states in the territory northwest of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven: *Resolved, by the*

*Senate and House of Representatives of the United States of America in Congress assembled,* That the State of Illinois shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

[Approved, December 3, 1818.]

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CONSTITUTION  
OF THE  
STATE OF ILLINOIS.

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The people of the Illinois Territory, having the right of admission into the general government as a member of the Union, consistent with the constitution of the United States, the ordinance of Congress of 1787, and the law of congress "approved April 18th, 1818," entitled "an act to enable the people of the Illinois Territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and for other purposes;" in order to establish justice, promote the welfare and secure the blessings of liberty to themselves and their posterity, do by their representatives in convention ordain and establish the following constitution or form of government; and do mutually agree with each other to form themselves into a free and independent state by the name of the state of ILLINOIS. And they do hereby ratify the boundaries assigned to such state by the act of congress aforesaid, which are as follows, to-wit: Beginning at the mouth of the Wabash river, thence up the same, and with the line of Indiana to the northwest corner of said state; thence east with the line of the same state, to the middle of lake Michigan; thence north along the middle of said lake, to north latitude forty-two degrees and thirty minutes; thence west to the middle of the Mississippi river; and thence down along the middle of that river to its confluence with the Ohio river; and thence up the latter river along its north western shore to the beginning.

ARTICLE I.

CONCERNING THE DISTRIBUTION OF THE POWERS OF GOVERNMENT.

SEC. 1. The powers of the government of the state of Illinois, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: Those which are le-

gislative to one; those which are executive to another; and those which are judiciary to another.

SEC. 2. No person or collection of persons, being one of those departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

## ARTICLE II.

SEC. 1. The legislative authority of this state, shall be vested in a general assembly, which shall consist of a senate and house of representatives, both to be elected by the people.

SEC. 2. The first election for senators and representatives, shall commence on the third Thursday of September next, and continue for that and the two succeeding days; and the next election shall be held on the first Monday in August, one thousand eight hundred and twenty, and forever after, elections shall be held once in two years, on the first Monday of August, in each and every county, at such places therein as may be provided by law.

SEC. 3. No person shall be a representative who shall not have attained the age of twenty-one years, who shall not be a citizen of the United States, and an inhabitant of this state: who shall not have resided within the limits of the county or district in which he shall be chosen, twelve months next preceding his election, if such county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts out of which the same shall have been taken, unless he shall have been absent on the public business of the United States or of this state; and who moreover shall not have paid a state or county tax.

SEC. 4. The senators at their first session herein provided for, shall be divided by lot from their respective counties or districts, as near as can be, into two classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; and those of the second class at the expiration of the fourth year, so that one-half thereof, as near as possible, may be biennially chosen forever thereafter.

SEC. 5. The number of senators and representatives, shall at the first session of the general assembly, holden after the returns herein provided for are made, be fixed by the general assembly, and apportioned among the several counties or districts to be established by law, according to the number of white inhabitants. The number of representatives shall not be less than twenty-seven, nor more than thirty-six, until the number of inhabitants within this state shall amount to one hundred thousand; and the number of senators shall never be less than one-third nor more than one half of the number of representatives.

SEC. 6. No person shall be a senator who has not arrived at the age of twenty-five years, who shall not be a citizen of the United States.

and who shall not have resided one year in the county or district in which he shall be chosen immediately preceding his election, if such county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken; unless he shall have been absent on the public business of the United States or of this state, and shall not moreover have paid a state or county tax.

SEC. 7. The senate and house of representatives, when assembled, shall each choose a speaker and other officers, (the speaker of the senate excepted:) each house shall judge of the qualifications and elections of its members, and sit upon its own adjournments. Two-thirds of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

SEC. 8. Each house shall keep a journal of its proceedings, and publish them: the yeas and nays of the members, on any question, shall, at the desire of any two of them, be entered on the journals.

SEC. 9. Any two members of either house, shall have liberty to dissent and protest against any act or resolution which they may think injurious to the public, or to any individual, and have the reasons of their dissent entered on the journals.

SEC. 10. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour; and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

SEC. 11. When vacancies happen in either house, the governor, or the person exercising the powers of governor, shall issue writs of election to fill such vacancies.

SEC. 12. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and in going to, and returning from, the same, and for any speech or debate in either house, they shall not be questioned in any other place.

SEC. 13. Each house may punish by imprisonment during its session, any person not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behaviour in their presence; provided such imprisonment shall not at any one time exceed twenty-four hours.

SEC. 14. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as in the opinion of the house, require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting.

SEC. 15. Bills may originate in either house, but may be altered, amended, or rejected by the other.

SEC. 16. Every bill shall be read on three different days in each house, unless in case of urgency, three-fourths of the house where

such bill is so depending shall deem it expedient to dispense with this rule; and every bill having passed both houses shall be signed by the speakers of the respective houses.

SEC. 17. The style of the laws of this state shall be, "*Be it enacted by the people of the state of Illinois, represented in the general assembly.*"

SEC. 18. The general assembly of this state shall not allow the following officers of government greater or smaller annual salaries than as follows, until the year one thousand eight hundred and twenty-four: The governor one thousand dollars; and the secretary of state, six hundred dollars.

SEC. 19. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased during such time.

SEC. 20. No money shall be drawn from the treasury but in consequence of appropriations made by law.

SEC. 21. An accurate statement of the receipts and expenditures of the public money, shall be attached to, and published with, the laws, at the rising of each session of the general assembly.

SEC. 22. The house of representatives shall have the sole power of impeaching, but a majority of all the members present must concur in an impeachment; all impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation, to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of all the senators present.

SEC. 23. The governor, and all other civil officers under this state, shall be liable to impeachment for any misdemeanor in office: but judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, profit or trust under this state. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

SEC. 24. The first session of the general assembly shall commence on the first Monday of October next, and forever after, the general assembly shall meet on the first Monday in December next ensuing the election of the members thereof, and at no other period, unless as provided by this constitution.

SEC. 25. No judge of any court of law or equity, secretary of state, attorney-general, attorney for the state, register, clerk of any court of record, sheriff or collector, member of either house of congress, or person holding any lucrative office under the United States or this state, (provided that appointments in the militia, postmasters or justices of the peace shall not be considered lucrative offices) shall have a seat in the general assembly: nor shall any person holding an office of honor or profit under the government of the United States, hold any office of honor or profit under the authority of this state.

SEC. 26. Every person who shall be chosen or appointed to any

office of trust or profit shall, before entering upon the duties thereof, take an oath to support the constitution of the United States and of this state, and also an oath of office.

SEC. 27. In all elections, all white male inhabitants above the age of twenty-one years, having resided in the state six months next preceding the election, shall enjoy the right of an elector; but no person shall be entitled to vote except in the county or district in which he shall actually reside at the time of the election.

SEC. 28. All votes shall be given *viva voce* until altered by the general assembly.

SEC. 29. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same.

SEC. 30. The general assembly shall have full power to exclude from the privilege of electing or being elected any person convicted of bribery, perjury or any other infamous crime.

SEC. 31. In the year one thousand eight hundred and twenty, and every fifth year thereafter, an enumeration of all the white inhabitants of the state shall be made, in such manner as shall be directed by law.

SEC. 32. All bills for raising a revenue shall originate in the house of representatives, subject, however, to amendment or rejection, as in other cases.

### ARTICLE III.

SEC. 1. The executive power of the state shall be vested in a governor.

SEC. 2. The first election of governor shall commence on the third Thursday of September next, and continue for that and the two succeeding days; and the next election shall be held on the first Monday of August, in the year of our Lord one thousand eight hundred and twenty-two. And forever after, elections for governor shall be held once in four years, on the first Monday of August. The governor shall be chosen by the electors of the members of the general assembly, at the same places and in the same manner that they shall respectively vote for members thereof. The returns for every election of governor shall be sealed up and transmitted to the seat of government by the returning officers, directed to the speaker of the house of representatives, who shall open and publish them in the presence of a majority of the members of each house of the general assembly. The person having the highest number of votes shall be governor; but if two or more be equal and highest in votes, then one of them shall be chosen governor by joint ballot of both houses of the general assembly. Contested elections shall be determined by both houses of the general assembly in such manner as shall be prescribed by law.

SEC. 3. The first governor shall hold his office until the first Monday of December, in the year of our Lord one thousand eight hundred and twenty-two, and until another governor shall be elected and

qualified to office: and forever after, the governor shall hold his office for the term of four years, and until another governor shall be elected and qualified; but he shall not be eligible for more than four years in any term of eight years. He shall be at least thirty years of age, and have been a citizen of the United States thirty years; two years of which next preceding his election he shall have resided within the limits of this state.

SEC. 4. He shall, from time to time, give the general assembly information of the state of the government, and recommend to their consideration such measures as he shall deem expedient.

SEC. 5. He shall have power to grant reprieves and pardons after conviction, except in cases of impeachment.

SEC. 6. The governor shall, at stated times, receive a salary for his services, which shall neither be increased nor diminished during the term for which he shall have been elected.

SEC. 7. He may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed.

SEC. 8. When any officer, the right of whose appointment is, by this constitution, vested in the general assembly, or in the governor and senate, shall, during the recess, die, or his office, by any means, become vacant, the governor shall have power to fill such vacancy, by granting a commission which shall expire at the end of the next session of the general assembly.

SEC. 9. He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to them when assembled, the purpose for which they shall have been convened.

SEC. 10. He shall be commander in chief of the army and navy of this state, and of the militia, except when they shall be called into the service of the United States.

SEC. 11. There shall be elected in each and every county in the said state, by those who are qualified to vote for members of the general assembly, and at the same times and places where the election for such members shall be held, one sheriff and one coroner, whose election shall be subject to such rules and regulations as shall be prescribed by law. The said sheriffs and coroners respectively, when elected, shall continue in office two years, be subject to removal and disqualification, and such other rules and regulations as may be, from time to time, prescribed by law.

SEC. 12. In case of disagreement between the two houses with respect to the time of adjournment, the governor shall have power to adjourn the general assembly to such time as he thinks proper, provided it be not to a period beyond the next constitutional meeting of the same.

SEC. 13. A lieutenant-governor shall be chosen at every election for governor, in the same manner, continue in office for the same time and possess the same qualifications. In voting for governor and

lieutenant-governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant-governor.

SEC. 14. He shall by virtue of his office be speaker of the senate, have a right when in committee of the whole to debate, and vote on all subjects; and whenever the senate are equally divided, to give the casting vote.

SEC. 15. Whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own members as speaker for that occasion; and if during the vacancy of the office of governor, the lieutenant-governor shall be impeached, removed from office, refuse to qualify, or resign or die, or be absent from the state, the speaker of the senate shall in like manner administer the government.

SEC. 16. The lieutenant-governor, while he acts as speaker of the senate, shall receive for his services the same compensation, which shall for the same period be allowed to the speaker of the house of representatives and no more: and during the time he administers the government as governor, he shall receive the same compensation which the governor would have received had he been employed in the duties of his office.

SEC. 17. If the lieutenant-governor shall be called upon to administer the government, and shall, while in such administration resign, die or be absent from the state during the recess of the general assembly, it shall be the duty of the secretary for the time being, to convene the senate for the purpose of choosing a speaker.

SEC. 18. In case of an impeachment of the governor, his removal from office, death, refusal to qualify, resignation or absence from the state, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this constitution for the election of governor shall arrive, unless the general assembly shall provide by law for the election of a governor to fill such vacancy.

SEC. 19. The governor for the time being and the judges of the supreme court or a major part of them, together with the governor, shall be and are hereby constituted a council to revise all bills about to be passed into laws by the general assembly; and for that purpose shall assemble themselves from time to time when the general assembly shall be convened; for which nevertheless they shall not receive any salary or consideration under any pretence whatever; and all bills which have passed the senate and house of representatives shall, before they become laws, be presented to the said council for their revision and consideration; and if upon such revision and consideration, it should appear improper to the said council or a majority of them, that the bill should become a law of this state, they shall return the same, together with their objections thereto in writing to the senate or house of representatives (in which soever the same shall have originated) who shall enter the objections set down by the council at large in their minutes, and proceed to reconsider the said bill. But if after

such reconsideration the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same by a majority of the whole number of members elected; it shall, together with the said objections, be sent to the other branch of the general assembly, where it shall also be reconsidered; and if approved by a majority of all the members elected, it shall become a law. If any bill shall not be returned within ten days after it shall have been presented, the same shall be a law; unless the general assembly shall by their adjournment render a return of the said bill in ten days impracticable; in which case the said bill shall be returned on the first day of the meeting of the general assembly, after the expiration of the said ten days, or be a law.

SEC. 20. The governor shall nominate, and by and with the advice and consent of the Senate appoint a secretary of state, who shall keep a fair register of the official acts of the governor, and when required, shall lay the same and all papers, minutes and vouchers, relative thereto, before either branch of the general assembly, and shall perform such other duties as shall be assigned him by law.

SEC. 21. The state treasurer and public printer or printers for the state shall be appointed biennially by the joint vote of both branches of the general assembly: *Provided*, That during the recess of the same, the governor shall have power to fill such vacancies as may happen in either of said offices.

SEC. 22. The governor shall nominate, and by and with the advice and consent of the senate, appoint all officers whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for: *Provided however*, That inspectors, collectors and their deputies, surveyors of the highways, constables, jailors and such inferior officers whose jurisdiction may be confined within the limits of the county, shall be appointed in such manner as the general assembly shall prescribe.

#### ARTICLE IV.

SEC. 1. The judicial power of this state shall be vested in one supreme court, and such inferior courts as the general assembly shall, from time to time, ordain and establish.

SEC. 2. The supreme court shall be holden at the seat of government, and shall have an appellate jurisdiction only, except in cases relating to the revenue, in cases of mandamus, and in such cases of impeachment as may be required to be tried before it.

SEC. 3. The supreme court shall consist in a chief justice and three associates, any two of whom shall form a quorum. The number of justices may, however, be increased by the general assembly after the year one thousand eight hundred and twenty-four.

SEC. 4. The justices of the supreme court and the judges of the inferior courts shall be appointed by joint ballot of both branches of the general assembly, and commissioned by the governor, and shall

hold their offices during good behavior until the end of the first session of the general assembly, which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-four, at which time their commissions shall expire: and until the expiration of which time, the said justices, respectively, shall hold circuit courts in the several counties, in such manner and at such times, and shall have and exercise such jurisdiction as the general assembly shall by law prescribe. But ever after the aforesaid period, the justices of the supreme court shall be commissioned during good behavior, and the justices thereof shall not hold circuit courts unless required by law.

SEC. 5. The judges of the inferior courts shall hold their offices during good behavior, but for any reasonable cause which shall not be sufficient ground for impeachment, both the judges of the supreme and inferior courts shall be removed from office on the address of two-thirds of each branch of the general assembly: Provided always, that no member of either house of the general assembly, nor any person connected with a member by consanguinity, or affinity, shall be appointed to fill the vacancy occasioned by such removal. The said justices of the supreme court, during their temporary appointments, shall receive an annual salary of one thousand dollars, payable quarter yearly out of the public treasury. The judges of the inferior courts, and the justices of the supreme court who may be appointed after the end of the first session of the general assembly, which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-four, shall have adequate and competent salaries, which shall not be diminished during their continuance in office.

SEC. 6. The supreme court, or a majority of the justices thereof, the circuit courts, or the justices thereof, shall, respectively, appoint their own clerks.

SEC. 7. All process, writs and other proceedings shall run in the name of "*the people of the state of Illinois.*" All prosecutions shall be carried on "*in the name and by the authority of the people of the state of Illinois,*" and conclude "*against the peace and dignity of the same.*"

SEC. 8. A competent number of justices of the peace shall be appointed in each county in such manner as the general assembly may direct, whose time of service, power and duties shall be regulated and defined by law. And justices of the peace, when so appointed, shall be commissioned by the governor.

## ARTICLE V.

SEC. 1. The militia of the state of Illinois shall consist of all free male able bodied persons, negroes, mulattoes and Indians excepted, resident in the state, between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be exempted by the laws of the United States or of this state, and shall be armed,

equipped and trained as the general assembly may provide by law.

SEC. 2. No person or persons, conscientiously scrupulous of bearing arms, shall be compelled to do militia duty in time of peace, provided such person or persons shall pay an equivalent for such exemption.

SEC. 3. Company, battalion and regimental officers, staff officers excepted, shall be elected by the persons composing their several companies, battalions and regiments.

SEC. 4. Brigadier and major-generals shall be elected by the officers of their brigades and divisions respectively.

SEC. 5. All militia officers shall be commissioned by the governor, and may hold their commissions during good behaviour, or until they arrive at the age of sixty years.

SEC. 6. The militia shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at musters and elections of officers, and in going to and returning from the same.

## ARTICLE VI.

SEC. 1. Neither slavery nor involuntary servitude shall hereafter be introduced into this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person, arrived at the age of twenty-one years, nor female person, arrived at the age of eighteen years, be held to serve any person as a servant, under any indenture hereafter made, unless such person shall enter into such indenture while in a state of perfect freedom, and on condition of a bona fide consideration received or to be received for their service. Nor shall any indenture of any negro or mulatto hereafter made and executed out of this state, or if made in this state, where the term of service exceeds one year, be of the least validity, except those given in cases of apprenticeship.

SEC. 2. No person bound to labor in any other state, shall be hired to labor in this state, except within the tract reserved for the salt works near Shawneetown; nor even at that place for a longer period than one year at any one time; nor shall it be allowed there after the year one thousand eight hundred and twenty-five: any violation of this article shall effect the emancipation of such person from his obligation to service.

SEC. 3. Each and every person who has been bound to service by contract or indenture in virtue of the laws of the Illinois Territory heretofore existing, and in conformity to the provisions of the same, without fraud or collusion, shall be held to a specific performance of their contracts or indentures; and such negroes and mulattoes as have been registered in conformity with the aforesaid laws shall serve out the time appointed by said laws: provided however, that the children hereafter born of such persons, negroes or mulattoes, shall become free, the males at the age of twenty-one years, the females at the age of eighteen years. Each and every child born of indentured parents, shall be en-

tered with the clerk of the county in which they reside by their owners, within six months after the birth of said child.

## ARTICLE VII.

SEC. 1. Whenever two-thirds of the general assembly shall think it necessary to alter or amend this constitution, they shall recommend to the electors at the next election of members to the general assembly to vote for or against a convention; and if it shall appear that a majority of all the citizens of the state voting for representatives have voted for a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there may be in the general assembly; to be chosen in the same manner, at the same place and by the same electors that choose the general assembly, and which convention shall meet within three months after the said election, for the purpose of revising, altering or amending this constitution.

## ARTICLE VIII.

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DE-  
CLARE,

SEC. 1. That all men are born equally free and independent, and have certain inherent and indefeasible rights; among which are those of enjoying and defending life and liberty, and of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

SEC. 2. That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority can in any case whatever control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious establishments or modes of worship.

SEC. 4. That no religious test shall ever be required as a qualification to any office or public trust under this state.

SEC. 5. That elections shall be free and equal.

SEC. 6. That the right of the trial by jury shall remain inviolate.

SEC. 7. That the people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures; and that general warrants whereby an officer may be commanded to search suspected places without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.

SEC. 8. That no freeman shall be imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty or property, but by the judgment of his peers or the law of the land. And all lands which have been granted as a common to the inhabitants of any town, hamlet, village or corporation, by any person, body politic or corporate, or by any government having power to make such grant, shall forever remain common to the inhabitants of such town, hamlet, village or corporation: and the said commons shall not be leased, sold or divided under any pretence whatever: Provided however, that nothing in this section shall be so construed as to affect the commons of Cahokia or Prairie du Pont: Provided also, that the general assembly shall have power and authority to grant the same privileges to the inhabitants of the said villages of Cahokia and Prairie du Pont as are hereby granted to the inhabitants of other towns, hamlets and villages.

SEC. 9. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his favor. And in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage: and that he shall not be compelled to give evidence against himself.

SEC. 10. That no person shall, for any indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the militia when in actual service, in time of war or public danger, by leave of the courts, for oppression or misdemeanor in office.

SEC. 11. No person shall, for the same offence, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives in the general assembly, nor without just compensation being made to him.

SEC. 12. Every person within this state ought to find a certain remedy in the laws, for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain right and justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

SEC. 13. That all persons shall be bailable by sufficient sureties, unless for capital offences, where the proof is evident or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

SEC. 14. All penalties shall be proportioned to the nature of the offence, the true design of all punishments being to reform, not to exterminate, mankind.

SEC. 15. No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or in cases where there is strong presumption of fraud.

SEC. 16. No *ex post facto* law, nor any law impairing the validity of contracts shall ever be made; and no conviction shall work corruption of blood or forfeiture of estate.

SEC. 17. That no person shall be liable to be transported out of this state for any offence committed within the same.

SEC. 18. That a frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

SEC. 19. That the people have a right to assemble together in a peaceable manner to consult for their common good, to instruct their representatives, and to apply to the general assembly for redress of grievances.

SEC. 20. That the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession.

SEC. 21. That there shall be no other banks or monied institutions in this state but those already provided by law, except a state bank and its branches, which may be established and regulated by the general assembly of the state as they may think proper.

SEC. 22. The printing presses shall be free to every person who undertakes to examine the proceedings of the general assembly or of any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.

SEC. 23. In prosecutions for the publication of papers investigating the official conduct of officers, or of men acting in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels the jury shall have the right of determining both the law and the fact, under the direction of the court as in other cases.

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### SCHEDULE.

SEC. 1. That no inconveniences may arise from the change of a territorial to a permanent state government, it is declared by the convention, that all rights, suits, actions, prosecutions, claims and contracts, both as it respects individuals and bodies corporate, shall continue as if no change had taken place in this government in virtue of the laws now in force.

SEC. 2. All fines, penalties and forfeitures due and owing to the territory of Illinois shall enure to the use of the state. All bonds executed to the governor, or to any other officer in his official capacity in the territory, shall pass over to the governor or to the officers of the state, and their successors in office, for the use of the state, by him or by them to be respectively assigned over to the use of those concerned, as the case may be.

SEC. 3. No sheriff, or collector of public moneys, shall be eligible to any office in this state, until they have paid over according to law, all moneys which they may have collected by virtue of their respective offices.

SEC. 4. There shall be elected in each county three county commissioners for the purpose of transacting all county business, whose time of service, power and duties shall be regulated and defined by law.

SEC. 5. The governor, secretary and judges, and all other officers under the territorial government shall continue in the exercise of the duties of their respective departments until the said officers are superseded under the authority of this constitution.

SEC. 6. The governor of this state shall make use of his private seal, until a state seal shall be provided.

SEC. 7. The oaths of office herein directed to be taken, may be administered by any justice of the peace until the general assembly shall otherwise direct.

SEC. 8. Until the first census shall be taken as directed by this constitution, the county of Madison shall be entitled to one senator and three representatives; the county of St. Clair, to one senator and three representatives; the county of Bond, to one senator and one representative; the county of Washington, to one senator and one representative; the county of Monroe, to one senator and one representative; the county of Randolph, to one senator and two representatives; the county of Jackson, to one senator and one representative; the counties of Johnson and Franklin to form one senatorial district, and to be entitled to one senator, and each county to one representative; the county of Union, to one senator and two representatives; the county of Pope, to one senator and two representatives; the county of Gallatin, to one senator and three representatives; the county of White, to one senator and three representatives; the county of Edwards, to one senator and two representatives; and the county of Crawford, to one senator and two representatives.

SEC. 9. The president of the convention shall issue writs of election, directed to the several sheriffs of the several counties, or in case of the absence or disability of any sheriff, then to the deputy sheriff, and in case of the absence or disability of the deputy sheriff, then such writ to be directed to the coroner, requiring them to cause an election to be held for governor, lieutenant-governor, representative to the present congress of the United States, and members to the general assembly, and sheriffs and coroners, in the respective counties; such election to commence on the third Thursday of September next, and to continue for that and the two succeeding days; and which election shall be conducted in the manner prescribed by the existing election laws of the Illinois Territory; and the said governor, lieutenant-governor, members of the general assembly, sheriffs and coroners, then duly elected, shall continue to exercise the duties of their respective offices.

for the time prescribed by this constitution, and until their successors or successors are qualified, and no longer.

SEC. 10. An auditor of public accounts, an attorney general, and such other officers for the state as may be necessary, may be appointed by the general assembly; whose duties may be regulated by law.

SEC. 11. It shall be the duty of the general assembly to enact such laws as may be necessary and proper to prevent the practice of duelling.

SEC. 12. All white male inhabitants above the age of twenty-one years, who shall be actual residents of this state, at the signing of this constitution, shall have a right to a vote at the election to be held on the third Thursday and the two following days of September next.

SEC. 13. The seat of government for the state shall be at Kaskaskia until the general assembly shall otherwise provide. The general assembly, at their first session holden under the authority of this constitution, shall petition the congress of the United States, to grant to this state a quantity of land, to consist of not more than four, nor less than one section, or to give to this state the right of pre-emption in the purchase of the said quantity of land. The said land to be situate on the Kaskaskia river, and as near as may be, east of the third principal meridian on said river. Should the prayer of such petition be granted, the general assembly, at their next session thereafter, shall provide for the appointment of five commissioners to make the selection of said land so granted; and shall further provide for laying out a town upon the land so selected; which town, so laid out, shall be the seat of government of this state for the term of twenty years. Should, however, the prayer of said petition not be granted, the general assembly shall have power to make such provision for a permanent seat of government as may be necessary, and shall fix the same where they may think best.

SEC. 14. Any person of thirty years of age who is a citizen of the United States and has resided within the limits of this state two years next preceding his election, shall be eligible to the office of lieutenant-governor—any thing in the thirteenth section of the third article of this constitution contained to the contrary notwithstanding.

Done in Convention at Kaskaskia, the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighteen, and of the Independence of the United States of America, the forty-third.

IN TESTIMONY WHEREOF, we have hereunto subscribed our names.

JESSE B. THOMAS, *President of the Convention and representative from the county of St. Clair.*

John Messinger, } St. Clair county.  
James Lemen, jr. }  
George Fisher, } Randolph county.  
Elias Kent Kane, }

## ORDINANCE.

B. Stephenson,	}	<i>Madison county.</i>
Joseph Borough,		
Abraham Prickett,	}	<i>Gallatin county.</i>
Michael Jones,		
Leonard White,	}	<i>Johnson county.</i>
Adolphus Frederick Hubbard,		
Hezekiah West,	}	<i>Edwards county.</i>
William M'Fatridge,		
Seth Gard,	}	<i>White county.</i>
Levi Compton,		
Willis Hargrave,	}	<i>Monroe county.</i>
William M'Henry,		
Caldwell Carns,	}	<i>Pope county.</i>
Enoch Moore,		
Samuel Omelveny,	}	<i>Jackson county.</i>
Hamlet Ferguson,		
Conrad Will,	}	<i>Crawford county.</i>
James Hall, jr.		
Joseph Kitchell,	}	<i>Bond county.</i>
Ed. N. Cullom,		
Thos. Kirkpatrick,	}	<i>Union county.</i>
Samuel G. Morse,		
William Echols,	}	<i>Washington county.</i>
John Whitekar,		
Andrew Bankson,	}	<i>Franklin county.</i>
Isham Harrison,		
Thomas Roberts,		

ATTEST,

WM. C. GREENUP,

*Secretary to the Convention.*

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**AN ORDINANCE.**

WHEREAS, the Congress of the United States, in the act entitled "An act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such state into the union on an equal footing with the original states, passed the 18th of April, 1818," have offered to this convention for their free acceptance or rejection, the following propositions, which if accepted by the convention are to be obligatory upon the United States, viz:

"1st. That section numbered sixteen in every township, and when such section has been sold, or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the state for the use of the inhabitants of such township for the use of schools.

2d. That all salt springs within such state, and the lands reserved

for the use of the same shall be granted to the said state for the use of the said state, and the same to be used under such terms and conditions and regulations as the legislature of said state shall direct; provided the legislature shall never sell nor lease the same for a longer period than ten years at any one time.

3d. That five per cent. of the nett proceeds of the lands lying within such state, and which shall be sold by congress from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz: Two-fifths to be disbursed under the direction of congress, in making roads leading to the state; the residue to be appropriated by the legislature of the state for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university.

4th. That thirty-six sections or one entire township, which shall be designated by the president of the United States, together with the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state, to be appropriated solely to the use of such seminary by the said legislature."

And whereas, the four foregoing propositions are offered on the condition that this convention shall provide by ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of January, 1819, shall remain exempt from any tax laid by order, or under the authority of the state, whether for state, county or township, or any other purpose whatever, for the term five years, from and after the day of sale. And further, that the bounty lands granted, or hereafter to be granted for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt as aforesaid from all taxes for the term of three years from and after the date of the patents respectively; and that all the lands belonging to the citizens of the United States, residing without the said state shall never be taxed higher than lands belonging to persons residing therein.

Therefore, this convention, on behalf of, and by the authority of the people of the state, do accept of the foregoing propositions; and do further ordain and declare, that every and each tract of land sold by the United States, from and after the first day of January, 1819, shall remain exempt from any tax laid by order, or under any authority of the state, whether for state, county or township, or any purpose whatever, for the term of five years from and after the day of sale. And that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt, as aforesaid, from all taxes for the term of three years from and after the date of the patents respectively; and that all the lands belonging to the citizens of the United States, residing without the said state, shall never

## ORDINANCE.

be taxed higher than lands belonging to persons residing therein.—  
And this convention do further ordain and declare, that the foregoing ordinance shall not be revoked without the consent of the United States.

Done in Convention at Kaskaskia, the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighteen, and of the Independence of the United States of America, the forty-third.

JESSE B. THOMAS,  
*President of the Convention.*

ATTEST,

WM. C. GREENUP,  
*Secretary to the Convention.*

# STATUTE LAWS

OF THE

## STATE OF ILLINOIS,

REVISED AND PUBLISHED UNDER THE DIRECTION AND AUTHORITY OF THE GENERAL ASSEMBLY.



### ABATEMENT.

*AN ACT relative to pleas in abatement, and the abatement of suits by the death of parties.* In force Dec 16, 1826

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That no plea in abatement, other than a plea to the jurisdiction of the court, or where the truth of such plea appears of record, shall be admitted or received, unless the party offering the same, file an affidavit of the truth thereof. And where a plea in abatement shall, upon argument, be determined insufficient, the plaintiff shall recover full costs, to the time of overruling such plea.

Pleas in abatement not received unless on oath.

Costs awarded on insufficient pleas.

SEC. 2. When one or more of the parties of a company, or association of individuals, shall be sued, and the person or persons so sued, shall plead in abatement, that all the parties are not joined in the suit, such suit, for that cause, shall not abate, if the plaintiff or plaintiffs, forthwith sue out a summons against the other partners named in the plea of abatement, and on the return of the summons, may insert in the declaration, the names of the other partners named in such plea, and proceed in all respects thereafter, as though such other partners named in said plea had been included in the original suit. And if such partners named in said plea, cannot be found, the plaintiff or plaintiffs, upon the return of the said summons, may suggest in his declaration the names of those not found, and proceed as in other cases where service is only made on part of the defendants. And no other plea in abatement for non joinder of defendants shall be allowed in the case.

If parties can not be found it may be suggested, &c.

No other plea in abatement allowed.

SEC. 3. No action commenced by a single woman, who intermarries during the pendency thereof, shall abate on account of such marriage: *Provided*, the husband shall appear in court, and cause such marriage to be suggested on the record, and the suit may then proceed in the same manner as if it had been commenced after such marriage.

Suits not to abate by marriage.

Proviso.

Suits not to abate by death of plaintiff if, &c and exec-  
utor or admin-  
istrator,

may prose-  
cute the same

Same if de-  
fendant die, if  
&c

If death is sug-  
gested, sum-  
mons may is  
sue, and suit  
proceed to fi-  
nal judgment

Suits against  
admi-  
nistrato-  
s not to abate  
by revocation  
of letters of  
administra-  
tion

Summons to  
be served on  
last adminis-  
trator

Death not to  
abate suits,  
where there  
are two or  
more plffs or  
defendants if  
cause of action  
survive.

Writs of error  
included

Act of 1819  
repealed

SEC. 4. When any action shall be pending in any of the courts of this state, and the plaintiff, before final judgment, shall die, the same shall not abate, if it might originally have been prosecuted by his executor or administrator; and in such case the executor or administrator may suggest such death on the record, and enter his, her or their names in the suit, and prosecute the same. And if the defendant, while the action shall be pending in court, and before final judgment, shall die, the same shall not abate, if it might originally have been prosecuted against the executor or administrator. And the plaintiff, or his executor or administrator, may suggest such death on the record, and have a summons against the executor or administrator of such deceased defendant, requiring them to appear and defend the action. If the said executor or administrator of such deceased defendant, shall appear and make him, her or themselves defendants, or if they shall not appear and make themselves defendants, (such summons being served on any one of them, ten days before the sitting of the court,) the action shall, in either case, proceed to final judgment according to law. And when a suit shall be commenced against an administrator, and before final judgment, his letters of administration shall be revoked, and letters of administration be granted to another person, such suit shall not abate, but the plaintiff shall suggest such fact upon record; and after summons shall be served upon the last administrator, the suit shall proceed to final judgment as in other cases under this act.

SEC. 5. In any action pending before any court, if there be two or more plaintiffs or defendants, and one or more of them die before final judgment, if the cause of action survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not abate, but such death being suggested on the record, the action shall proceed.

SEC. 6. The third, fourth and fifth sections of this act shall be applicable to all appeals and writs of error.

SEC. 7. The act entitled "An act concerning the abatement of suits by the death of parties," approved February 6, 1819, is hereby repealed.

[Approved, 30th Dec. 1826.]

## ACCOUNT.

*AN ACT to regulate Actions of Account.*In force June  
1st, 1827.

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly, That when one or more joint tenants, tenants in common or coparceners, in real estate, or any interest therein, shall take, use or have the benefit thereof, in greater proportion than his, her or their interest therein, such person or persons, or his or their executors and administrators, shall be liable to render his or their reasonable account of the use and profit of such estate or interest, to his and their cotenant jointly and severally. Actions of account may be brought and maintained, by one joint tenant, tenant in common or coparcener, his or her executors or administrators against such, or any such cotenant receiving more than comes to his or her just share or proportion, as bailiff or bailiffs, and against his or her executors or administrators.*

Action of account extended to joint tenants, tenants in common &amp; coparceners

or their executors or administrators.

SEC. 2. Any executor, being a residuary legatee, may bring and maintain an action of account against his coexecutor or executors of the estate of the testator, in his or their hands; any other residuary legatee shall have the like remedy against executors and administrators.

Residuary legatee may maintain action of account

SEC. 3. Executors and administrators may have and maintain actions of account, in the same manner as their testator or intestate might have had and maintained, if he or she had lived. Such actions may be brought and maintained against the executors or administrators of every guardian, bailiff or receiver.

Exrs &amp; admrs may maintain action as their testator or intestate might

SEC. 4. When any person is or shall be liable to account, as guardian, bailiff or receiver, or otherwise to another, and will not give an account willingly, and the party to whom such an account ought to be made, shall sue out a writ of account, and the person against whom such writ shall be issued, being summoned, does not appear at the return of the writ, then the defendant shall be attached by his or her body to come and render his or her account.

Persons liable to the action not appearing to be attached

SEC. 5. Whenever a judgment shall be rendered against any defendant, in an action of account, that he do account, the court shall appoint not more than five, nor less than three able, disinterested and judicious men as auditors, to take the account, who shall be sworn faithfully and impartially to take and state the account, between the parties, and make report to the court; the auditors, or a majority of them, shall have power to appoint the time and place for the hearing, and shall give reasonable notice to the parties: and if the defendant shall neglect or refuse to

When judgment is rendered auditors to be appointed

Power of auditors

Defendants not appearing plaintiff's account to be received

If parties appear auditors to state acc'ts.

May examine witnesses or parties

To make report, upon which judgment is to be rendered with costs

Party refusing to be sworn may be committed to jail

Writs of error allowed

attend at the time and place appointed and render his account; or appearing, shall not render an account, the auditors shall receive a statement of the account from the plaintiff and award to him the whole sum he claims to be due.

SEC. 6. If the parties appear, and produce their books and accounts before the said auditors, such auditors, or a majority of them, shall proceed to take and state the accounts, and may take the testimony of witnesses, and examine either or both of the parties on oath respecting their accounts; and may administer all necessary oaths to witnesses and parties. The auditors shall liquidate and adjust the accounts and state the balance and to whom due. They, or a majority of those present, shall report to the court by whom they were appointed, at the next term thereof; and if such report shall be approved by the court, the court shall render judgment for the amount ascertained to be due, with costs; and the party in whose favour the report is made, shall pay the auditors their fees, which shall be taxed as costs. If either party shall refuse to be sworn, or answer proper questions respecting his account, the auditors may commit him to jail, there to remain, until he consent to be sworn or answer the interrogatories.

SEC. 7. Either party may appeal or prosecute a writ of error, from the final judgment upon the report of the auditors, in the same manner, and upon the same conditions, as provided by law in other cases. This act to take effect on the first day of June next.

[Approved, 11th Jan. 1827.]

## ADVERTISEMENTS.

In force Dec. 23, 1826.

### *AN ACT concerning the publication of Advertisements.*

Certificate of printer evidence of publication of advertisement

Advertisements to be paid for by party having the same inserted

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That when any notice or advertisement shall be required by law, or the order of any court, to be published in any newspaper, the certificate of the printer or publisher, with a written or printed copy of such advertisement annexed, stating the number of papers in which the same shall have been published, and the dates of the first and last papers containing the same, shall be sufficient evidence of the publication therein set forth.

SEC. 2. When any notice or advertisement shall be duly published as aforesaid, relating to any cause or matter depending in any court of record, the same shall be paid by the party at whose instance the same shall be publish-

ed; who may exhibit his account therefor, to the proper court, which account, or so much thereof as shall be deemed reasonable, may be taxed as costs, or otherwise allowed in the course of the proceeding to which such advertisement relates. And when such advertisement shall be made by any public officer, authorised by law so to do, the reasonable expense thereof, shall be allowed and paid out of the state or county treasury, as other demands and charges of the like nature.

[Approved, Dec. 28th, 1826.]

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### ALIENS.

*AN ACT to enable Aliens to hold real estate.*

In force 1st  
June, 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That aliens may take and hold real estate in this state by purchase or descent, and alienate and transmit the same to their heirs or assigns, in the same manner as natural born citizens of this state might or could do.

Aliens may hold real estate in the same manner as citizens.

SEC. 2. Every widow, who may be an alien, or whose husband may have been an alien, shall be entitled to dower, according to the laws of this state, in the same manner, as though she or her said husband were natural born citizens of this state.

Alien widows entitled to dower.

SEC. 3. "An act to authorise aliens to purchase and hold real estate within this state," approved February 6, 1819, is hereby repealed: but rights acquired under that act are not hereby affected. This act to take effect on the first day of June next.

[Approved, 7th Feb. 1827.]

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### AMENDMENTS AND JEOFAILS.

*AN ACT concerning Amendments and Jeofails.*

In force 1st  
June, 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That, by the misprision of a clerk, in any place wheresoever it be, no record or process shall be annulled or discontinued, by mistaking, in writing, one syllable or one letter too much or too little; but as soon as the thing is perceived, by challenge of the party, or in other manner, it shall be immediately amend-

Misprision of a clerk not to vitiate process or record

ed in due form, without giving advantage to the party that challenges the same, because of such misprision; and the court before whom such plea or record is made, or shall be depending, as well by adjournment, as by way of appeal, or error, or otherwise, shall have power and authority, to amend such record and process as aforesaid, as well after judgment, in any suit, plea, record or process given, as before judgment, as long as the same record and process is before them.

SEC. 2. The court in which any record, process, declaration, count, plea, warrant of attorney, writ, pannel or return is or may be, while the same remains before them, shall have power to examine such records, processes, declarations, counts, pleas, warrants of attorney, writs, panuels and returns, by them and their clerks, and amend (in affirmance of judgments of such records and processes) all that which, to them in their discretion, seemeth to be misprision of the clerks therein; so that by such misprision of the clerks, no judgment shall be reversed or annulled. And if any record, process, declaration, count, plea, warrant of attorney, writ, pannel or return be certified defective, otherwise than according to the writing which thereof remaineth in the offices, courts or places from whence they are certified, the parties, in affirmance of the judgments of such records and process, shall have advantage to allege that the same writing is variant from the said certificate: and that being found and certified, the same variance shall be, by the said court, reformed and amended according to the first writing.

SEC. 3. The courts before whom any misprision or default is, or shall be found, in any record or process, which is, or hereafter shall be depending before them, as well by way of appeal or error, as otherwise, or in the returns (the same made or to be made by sheriffs, coroners or any other) by misprision of the clerk of any of the said courts, or by misprision of the sheriffs, under-sheriffs or deputies, coroners or their clerks, or other officers, clerks, or other ministers whatsoever, shall have power to amend such defaults or misprisions according to their discretion, and, by examination thereof by the said courts, to be taken when they shall think needful; and all such amendments may be made as well after a judgment given upon verdict, confession, *nihil dicit*, or *non sum informatus*, as upon matter of law pleaded.

SEC. 4. For errors assigned, or to be assigned in any record, process, warrant of attorney, writ original or judicial, pannel or return, for that in any places of the same there be erasures or interlineations, or that there be any

Power of  
court to a-  
mend plead-  
ings

Courts may  
correct mis-  
prisions of  
sheriffs and  
others

addition, subtraction or diminution of words, letters or titles, or parcels of letters, found in any such record, process, warrant of attorney, writ, panel or return, no judgment, or record or decree, shall be reversed or annulled.

Judgments  
not to be re-  
versed for e-  
rasures or in-  
terlineations

SEC. 5. Record and process, real and personal or mixed, whereof judgment or decree shall be given and enrolled, or thing touching such pleas, shall in no wise be amended or impaired by new entering of the clerks, either by the record or things certified, in no term subsequent to that in which such judgment or decree is or shall be given and enrolled.

New entries  
of clerks not  
to impair or  
amend pleas  
&c

SEC. 6. If any issue hath been, or shall be tried by any court or jury, and be found for either party, in any court of record, then the court by whom judgment ought to be given, shall proceed and give judgment in the same, any mispleading, lack of color, insufficient pleading or jeofail, or any miscontinuance, discontinuance, misconceiving of process, misjoining of the issue, lack of warrant of attorney, or any other default or negligence of any of the parties, their counsellors or attorneys to the contrary notwithstanding; and the said judgments thereof, so to be had and given, shall stand in full strength and force, to all intents and purposes, according to the said verdict or finding, without any undoing the same by appeal, writ of error or false judgment, in like form as though no such default or negligence had ever been had or committed.

After verdict  
judge not to  
be stayed by  
mispleading  
or other er-  
rors in plead-  
ings

SEC. 7. If a verdict of a court or jury shall hereafter be given, for either party in any court of record, the judgment thereupon shall not be stayed or reversed by any default of form, or lack of form in any writ, original or judicial, count, declaration, plaint, bill, suit or demand, for want of any writ, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of any warrant of attorney, or by reason of any manner of default in process, upon, or after any aid-prayer or voucher; nor shall any such record or judgment after verdict, to be given hereafter, be reversed for any of the defects or causes aforesaid.

After verdict  
judgment not  
to be reversed  
for want of  
form &c

SEC. 8. If any verdict be rendered by the court or jury, for either party, in any court of record, the judgment thereupon shall not be stayed or reversed by reason of any variance in form only, between the original writ or process and the declaration, petition, plaint or demand, or for lack of an averment of any life or lives of any person or persons, so as upon examination, the said person be found to be in life, or by reason that any of the persons in whose favour the verdict is rendered is an infant, and appeared by attorney.

Or for any va-  
riance or lack  
of averment

Judgments  
not to be re-  
versed for  
want of cer-  
tain allega-  
tions.

SEC. 9. If any verdict shall hereafter be given by a court or jury for either party, in any court of record, judgment thereon shall not be stayed or reversed for any default in form or lack of form, or by reason that there are not pledges or but one pledge to prosecute returned upon the original writ, or because the name of the sheriff is not returned upon the original writ or process, or for default of entering pledges upon any petition or declaration, or for default of alleging the bringing into court, any bond, bill, indenture or other deed or writing mentioned in the declaration or other pleading, for default of allegation of bringing into court letters testamentary or of administration, or by reason of the omission of the words "*with force and arms*," or "*against the peace*," or for, or by reason of mistaking the christian or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month or year, by the clerk, in any bill, petition, declaration or pleading, where the right name, surname, sum, day, month or year, in any writ, record or proceeding, or on the same record where the mistake is committed, is, or are once truly and rightly alleged, whereunto the party might have demurred and shown the same for cause, nor for want of the averment or words "*and this he is ready to verify*," or "*and this he is ready to verify by the record*," or for not alleging, "*as appears by the record*," or that there was no right venue, so as the cause was tried by a jury of the proper county, or place where the action is laid, nor shall any judgment after verdict be reversed, for want of entering that the person against whom such judgment is given, "*be in mercy*" or "*be taken*," or by reason that the words "*be taken*" are entered for "*be in mercy*," or that the words "*be in mercy*" for "*be taken*," nor for that in the judgment "*it is granted*" are entered for "*it is considered*," nor for that the increase of costs, after the verdict in any action, are not entered at the request of the party for whom judgment is given, nor by reason that the costs on any judgment are not entered to be by consent of the plaintiff; but all such omission, variance, defects and all other matters of the like nature, not being against the right of the matters of the suit, nor whereby the issue or trial is altered, shall be amended by the courts, where such judgments are, or shall be given, or whereunto the record is or shall be removed by appeal or writ of error.

SEC. 10. Where any demurrer shall be joined, and entered in any action or suit, in any court of record, the judges shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission or

defect, for want of form in any writ, return, plaint, declaration or other pleading, process or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same, notwithstanding that such imperfection, omission or defect might heretofore have been taken to be matter of substance, so as sufficient matter appear on the said pleadings upon which the court may give judgment according to the very right of the cause; and therefore no advantage or exception shall be taken of or for an immaterial traverse, of or for default of entering pledges upon any petition or declaration, or for the default of alleging the bringing into court any bond, bill, indenture or writing mentioned in the declaration or other pleadings, or of, or for the default of alleging the bringing into court of letters testamentary or of administration, or of or for the omission of the words "with force and arms," and "against the peace," or either of them, or of, or for want of the averment or words, "and this he is ready to verify," or, "and this he is ready to verify by the record," or of, or for not alleging "as appears by the record," but the court shall give judgment according to the very right of the cause as aforesaid, without regarding any such imperfections, omissions and defects, or other matter of like nature, except the same shall be specially and particularly set down and shown for cause of demurrer: and no judgment shall be reversed for any such imperfection, omission, defect or want of form, except such only as are before excepted. And after demurrer joined, the court before whom the same shall be pending may, from time to time, amend all and every such imperfection, omission, defect and want of form as are before mentioned, other than those only which the party demurring shall specially and particularly set down, together with his demurrer as aforesaid.

SEC. 11. Every thing hereinbefore contained shall extend to all judgments which shall be entered upon confession, "nil dicit," or "non sum informatus," in any court of record; and no such judgment shall be reversed; nor any judgment upon any writ of enquiry of damages executed thereon shall be stayed or reversed for, or by reason of any imperfection, omission, defect, matter or thing which would have been aided and cured by this act in case a verdict had been given in such action or suit, so there be an original writ, duly issued according to law.

SEC. 12. This act shall extend to all suits in any court of record for the recovery of any debt due the state, or any duty or revenue thereto belonging, and also to all

On demurrers  
court to de-  
cide only the  
causes set  
forth by the  
party demur-  
ring

Certain de-  
fектs not caus-  
es of demur-  
rer

except speci-  
ally set forth

Other defects  
may be amen-  
ded before  
judgment

Judgments by  
default or con-  
fession not to  
be reversed  
for defects  
which would  
have been cu-  
red by verdict

Writs of man-  
damus & quo  
warranto em-  
braced in this  
act

writs of mandamus and informations in the nature of *quo warranto* and proceedings thereon.

Writs of error may be amended

SEC. 13. All writs of error, wherein there shall be any variance from the original record, or any other defect, may and shall be amended, and made agreeable to such record by the respective courts where such writs of error are or shall be made returnable.

Provisions of this act not extended to *qui tam* or criminal cases

SEC. 14. No part of this act shall extend to any indictment or presentment for any criminal matter or process upon the same; nor to any writ, action or information upon any popular or penal statute; nor to any outlaw, or process thereupon in order thereunto.

Acts repealed

SEC. 15. All acts and parts of acts coming within the purview of this act, are hereby repealed: *Provided*, no defect in any proceeding heretofore had, shall be cured or affected by the repealing clause of this act. This act to take effect on the first day of June next.

[Approved, Jan. 11, 1827.]

## APPRENTICES.

In force first July 1827.

### AN ACT respecting Apprentices.

Males under 21, & females under 18 may be apprenticed with their own and the consent of their parent or guardian

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That if any male person within the age of twenty-one years, or female within the age of eighteen years, now is, or shall hereafter be bound by an indenture of his or her own free will and accord, and by and with the consent of his or her father, or in case of the death of his or her father, with the consent of his or her mother or guardian, to be expressed in such indenture, and signified by the signature and seal of such parent or guardian affixed to such indenture, and not otherwise, to serve as a clerk, apprentice or servant in any art or mystery, service, trade, employment, manual occupation or labor, until he or she arrive, if male, to the age of twenty-one, if female, to the age of eighteen years, as the case may be, or for a shorter term, then the said clerk, apprentice or servant so bound as aforesaid shall serve accordingly. *Provided*, That in all cases of illegitimate children, the mother, or in case of her death, the guardian shall be considered the proper person to give the consent required in this section, and, *provided further*, that it shall be lawful for any male infant under the age of twenty-one years, or any female under the age of eighteen years, and who shall have no parent or guardian living in

Mother the guardian of illegitimate children

this state, or whose parents shall be dead, by and with the approbation of the judge of probate, or of any two justices of the peace of the county where such infant shall reside, to bind himself or herself as a clerk, apprentice or servant as aforesaid, which approbation shall be endorsed on the indenture, and every such indenture shall be valid and binding; and one copy thereof shall be filed in the office of the judge of probate for safe keeping.

SEC. 2. When the father is not in legal capacity to give the consent aforesaid, or when he shall have wilfully abandoned his family, for the space of six months without making suitable provision for their support, or has become a habitual drunkard, the mother shall have the same power to give such consent as if the father were dead; which facts of incapacity, desertion and drunkenness shall be decided and found in the court of probate by a jury of the vicinage empanelled for that purpose, before the said indenture shall take effect; and an endorsement on the said indenture under the seal of the court, that the same are approved by the court, shall be sufficient evidence of the mother's power to give such consent as aforesaid. But if the jury so empanelled as aforesaid shall not find the facts charged; towit, incapacity, desertion or drunkenness, then the person at whose instance such proceedings may have been had, shall pay all costs attending the same, to be collected by the court of probate as costs in other cases.

SEC. 3. It shall be lawful for any two overseers of the poor, in any county of this state, by and with the consent of the judge of probate, or for any two justices of the peace, in any county of this state, to bind out any poor child, who is or shall be chargeable to the county, or shall beg for alms, or shall be unable by reason of infancy or inability, to take care of, and support himself or herself, or whose parents are or shall be chargeable to the county, or shall beg for alms, or the child of any poor and needy family, when the father is a habitual drunkard, or otherwise unable or unwilling to support his family, or if there be no father, where the mother is of bad character, or suffers her children to grow up in habits of idleness, without any visible means of obtaining an honest livelihood, to be apprentices as aforesaid, according to their degree and ability, until such child if a male shall arrive at the age of twenty-one years; if a female to the age of eighteen years, and the indentures or articles of agreement for binding any such infant shall be as effectual to all intents and purposes, as if such infant had bound himself or herself. One copy of such indentures, or articles of agreement, shall be filed in the office of the judge of probate for safe keeping. And

Infants having no parents or guardians may bind themselves with the approbation of the judge of probate or two justices of the peace

If the father is incapacitated the mother may bind the children

The fact of incapacity to be tried by a jury

Proviso as to costs.

When overseers of the poor may bind poor children.

Indentures to be filed in the office of the probate office.

it shall be the duty of the justices of the peace or judge of probate, to see that the terms of the said indentures and contracts be fulfilled, and that such child be not ill used.

Covenants to be inserted in indentures.

SEC. 4. In all indentures and contracts hereafter made, for the binding or putting out of any child as a clerk, apprentice or servant, there shall always be inserted among other covenants, a clause to the following effect: "That the master or mistress, to whom such child shall be bound as aforesaid, shall cause such child to be taught to read and write, and the ground rules of arithmetic; and shall also give unto such apprentice, a new bible, and two new suits of clothes, suitable to his or her condition, at the expiration of his or her term of service:" *Provided, however,* That when such apprentice is a negro or mulatto child, it shall not be necessary to insert in said indentures, that such negro or mulatto shall be taught to write, or the knowledge of arithmetic.

Proviso, as to negroes and mulattoes.

Age to be inserted in indentures

SEC. 5. The age of any infant who shall be bound to serve as a clerk, apprentice or servant, according to the preceding sections, shall be inserted in his or her indentures.

Indentures taken contrary to this law to be void.

The judge of probate or any two justices of the peace to receive complaints of apprentices.

And summon the master or mistress to appear before them.

SEC. 6. All indentures, covenants, promises, and bargains, for having, taking or keeping any clerk, apprentice or servant, hereafter to be made or taken, otherwise than is limited and prescribed by this act, shall be utterly void in law, as against such clerk, apprentice or servant.

SEC. 7. The judge of probate, or any two justices of the peace, shall at all times receive the complaints of apprentices, who reside within the jurisdiction of such judge or justices, against their masters or mistresses, alleging undeserved, or immoderate correction, unwholesome food, insufficient allowance of food, raiment or lodging, want of sufficient care or physic in sickness, want of instruction in their trade or profession, or the violation of any of the agreements or covenants in indentures of apprenticeship contained, or that he or she is in danger of being removed out of the jurisdiction of this state; and shall cause such masters or mistresses to be summoned before them, and shall on the return of the summons, whether such master or mistress appear or not, hear and determine such cases, in a summary way, and make such order thereon, as in the judgment of the said judge of probate, or two justices of the peace, will relieve the party injured in future; and shall have authority, if said judge or two justices think proper, to discharge such apprentice of and from his or her apprenticeship or service. And in case any money or other thing, shall have been paid, given, or contracted

## APPRENTICES.

57

or agreed for by either party in relation to the said apprenticeship or service, shall make such order concerning the same, as the said judge or justices of the peace shall deem just and reasonable. And if the said apprentice so discharged, shall have been bound originally by a judge of probate or two justices of the peace, it shall be the duty of the court granting the discharge, again to bind him or her, if said court shall judge proper.

But if such apprentice was bound by the judge of probate or justices of the peace, he may be re bound.

SEC. 8. The said judge of probate, or any two justices of the peace shall, on the complaint of masters or mistresses, issue a warrant against any apprentice for desertion, without good cause, or for any misdemeanor, miscarriage or ill-behavior, and may punish such apprentice or servant according to the nature and aggravation of his or her offence, by imprisonment not exceeding ten days; and in addition to the above punishment where the offence shall be desertion without good cause, the court may order the said apprentice or servant guilty thereof, to make restitution by the payment of a sum not exceeding eight dollars for each and every month he or she may be so absent, to be collected as other debts, after such servant or apprentice shall become of full age. The awarding of costs on proceedings under this and the preceding sections, shall be in the discretion of the court. An appeal to the circuit court from any decisions made under this or the preceding sections, shall be allowed to either party, upon the party appealing, entering into a bond, with good and sufficient security, in the penalty of one hundred dollars, conditioned to prosecute such appeal to effect, and to abide by and perform the decision of the circuit court in the premises: Its judgment which court shall hear and decide such appeal, upon the final. same principles as the said judge of probate or justices ought to have heard and decided the original complaint. The decision of the circuit court shall be final and conclusive in the premises, and shall not be subject to appeal or writ of error. The bond above mentioned, shall be entered into before the clerk of the circuit court, who shall thereupon proceed in said appeal as is directed by law, in cases of appeal from the decisions of justices of the peace in other cases.

Upon complaint of master or mistress the judge of probate or two justices of the peace may issue a warrant against the apprentice

And may order him to make restitution.

Costs may be awarded.

Appeal allowed to the circuit court.

SEC. 9. Every person who shall counsel, persuade, entice, aid or assist any clerk, apprentice or servant, to runaway or absent himself or herself from the service of his or her master or mistress, or to rebel against, or assault his or her master or mistress, shall forfeit and pay a sum not less than twenty, nor more than five hundred dollars, to be sued for and recovered by action on the case, with

Penalty for advising apprentice to runaway or assault his master.

costs, by such master or mistress, in any court having jurisdiction thereof.

**Penalty for harboring runaway apprentices.**

SEC. 10. Every person who shall entertain, harbor or conceal any clerk, apprentice or servant, knowing such clerk, apprentice or servant to have runaway, or to have absented himself or herself from the service of his or her master or mistress without leave, shall forfeit and pay one dollar for every day's entertaining, harboring or concealing as aforesaid; to be sued for and recovered by action of debt with costs, by such master or mistress, in any court having jurisdiction thereof.

**Executor may bind out in a certain case.**

SEC. 11. The executor or executors who are, or shall be by the last will and testament of a father, directed to bring up his child or children to some trade or calling, shall have power to bind such child or children, by indenture, in like manner as the father if living might have done, or shall raise such child or children according to such directions.

**Not to be removed out of the state.**

SEC. 12. It shall not be lawful for any master or mistress, to remove any clerk, apprentice or servant bound to him or her as aforesaid out of this state; and if at any time it shall appear to any judge, or justice of the peace, upon the oath of any competent person, that any master or mistress is about to remove, or cause to be removed, any such clerk, apprentice or servant out of this state, it shall be lawful for such judge or justice, to issue his warrant, and to cause such master or mistress to be brought before him, and if upon examination, it appear that such apprentice, clerk or servant, is in danger of being removed without the jurisdiction of this state, the judge or justice may require the master or mistress to enter into recognizance, with sufficient security, in the sum of one thousand dollars, conditioned that such apprentice, clerk or servant, shall not be removed without the jurisdiction of this state, and that the said master or mistress will appear with the apprentice, clerk or servant before the circuit court, at the next term thereof, and abide the decision of the court therein; which recognizance shall be returned to the circuit court, and the said court shall proceed therein, in a summary manner, and may discharge or continue the recognizance, or may require a new recognizance, and otherwise proceed according to law and justice. But if the master or mistress, when brought before any judge or justice, according to the provisions of this section, will not enter into a recognizance as aforesaid, if required so to do, it shall be lawful for such judge or justice to commit the custody of such apprentice, clerk or servant to some

**Power and duty of judge of probate and justices of the peace in such cases.**

other proper person, who will enter into recognizance as aforesaid.

SEC. 13. Whenever any master or mistress of any clerk, apprentice or servant, bound by the court as aforesaid, shall wish to remove out of this state, or to quit his or her trade or business, it shall and may be lawful for him or her, to appear with his or her apprentice, before the probate court of the proper county; and such court shall have power if they deem it expedient, to discharge such clerk, apprentice or servant from the service of such master or mistress, and again bind him or her if necessary, to some other person of the same trade, business or employment.

Master and  
mistress may  
surrender ap-  
prentice.

SEC. 14. When any person shall become bound as clerk, apprentice or servant, according to the provisions of this act, to two or more persons, and one or more of them die before the expiration of the term of service, the indentures and contracts shall survive to, and against such survivor or survivors; and in case of the death of all the masters or mistresses in any such indenture or contract named, before the expiration of the term of service, the executors or administrators shall bring the indenture and contract, and the clerk, apprentice or servant therein named, before the court of probate of the proper county, and such court shall if necessary, again bind such apprentice, clerk or servant to some other person.

Bound to two  
or more, in  
case of death  
of one, con-  
tract remains  
to and against  
survivor.

Duty of exe-  
cutors, &c. in  
such cases.

SEC. 15. Any clerk, apprentice or servant, bound according to the provisions of this act, who shall absent himself or herself from the service of his or her master or mistress, without leave first obtained, or who shall runaway, so that the master or mistress shall be deprived of his or her service, during the remainder of the term, or any part thereof, for which he or she was bound to serve, then and in that case, it shall and may be lawful for the master or mistress of such clerk, apprentice or servant, to have an action on the case, in any court of competent jurisdiction against such clerk, apprentice or servant, after he or she arrives at full age, for the damage that such master or mistress may have sustained, by reason of the absence of such clerk, apprentice or servant: *Provided*, That such action shall be brought within six years, after such clerk, apprentice or servant shall arrive at full age.

If apprentice  
runaway or  
absent himself  
master may  
recover dam-  
ages after full  
age of appren-  
tice.

Proviso.

SEC. 16. All acts and parts of acts coming within the purview of this act, are hereby repealed: *Provided*, That nothing herein contained, shall be so construed as to affect or impair the obligation of any existing indentures or contracts whatever. This act to take effect on the first day of July next.

[Approved, 30th Dec. 1826.]

## APPROPRIATIONS.

In force Feb.  
17, 1827*AN ACT making Appropriations for the years one thousand eight hundred and twenty-seven and twenty-eight.*Contingent  
fund

General fund

Contgt fund  
subject to or-  
der of Gov.Statement to  
be laid before  
legislatureAppropria-  
tions to

J. Delaplain

T. Redman.  
Essex &  
Houghan  
G. Forquer

R. Blackwell

Green & Mar-  
kee  
J. Enos  
J. Black  
E. C. Berry

Adjt. Gen.

C. Prentice

See'y of State

R. Blackwell

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly, That the sum of seven thousand state paper dollars, is hereby set apart and appropriated as a contingent fund to meet the contingent expenses of the state for the years one thousand eight hundred and twenty-seven and twenty-eight. All moneys arising from the different sources of revenue, and paid into the state treasury during the years aforesaid, except the fund appropriated for contingent expenses, shall be a general fund for all disbursements made by law. The said contingent fund shall be subject to the order of the governor, for the payment of any expenses which may be necessary and unforeseen by the legislature, and for printing and distributing the laws and journals of the present general assembly, a statement of which shall be laid before the next general assembly, in his biennial report.*

SEC. 2. There shall be paid out of any moneys in the treasury not otherwise appropriated, on the warrant of the auditor, to the different persons hereinafter named, the several sums annexed to their respective names, to wit: To John Delaplain, twenty-nine dollars and three cents, state paper; to Thomas Redman, nineteen dollars and sixty-four cents, state paper; to Essex & Houghan, fifty-four dollars and thirty cents, state paper; to George Forquer, fifty-five dollars and forty-three cents, in state paper; to C. B. Fletcher, twenty-five dollars and forty-four cents, in state paper; to Robert Blackwell for blanks for the auditor's, secretary's and treasurer's offices, one hundred and thirty-one dollars and forty-three cents, state paper; to Green and Markee, two dollars and eighty-six cents, state paper; to Joseph Enos, fourteen dollars and forty-six cents, state paper; to James Black, fifty-one dollars and seventy-three cents, state paper; to Elijah C. Berry, seventy-eight dollars and seventy cents, state paper, as per vouchers from 1 to 3 inclusive; to E. C. Berry, as adjutant general, for stationary, thirteen dollars and fifty-seven cents, state paper; to Charles Prentice, five dollars and thirty-six cents, state paper; to the secretary of state for clerk hire in copying and preparing the laws of the present session, and for a person to make marginal notes and an index to the same, four hundred dollars, state paper; to Robert Blackwell, for printing executive messages, rules and joint rules, reports, bills, and other docu-

ments, by order, and for the use of the general assembly, at the present session, three hundred and sixty-one dollars and-thirty-five cents, state paper; to Thomas Lippincott, for copying the revised laws reported by the judges of the supreme court, and prefixing marginal notes thereto, one hundred and fifty dollars, state paper; to Thomas Redman, four dollars and twenty-eight cents, state paper; to Alfred Cowles, for services rendered as assistant clerk in the house of representatives, fifty-four dollars, state paper; to the clerk of the house of representatives, for furnishing a copy of the journals to the public printer, three hundred state paper dollars; to the secretary of the senate, for a copy of the journal of the senate of the present session, for the public printer, two hundred and twenty-five dollars in state paper; to James O. Wattles, James Hall, Richard M. Young, and Samuel M'Roberts, for their services during the present session, in assisting in digesting the statutes, the sum of one hundred state paper dollars each; the sum of four state paper dollars per day for six days service of James O. Wattles as clerk to a committee; the sum of four state paper dollars per day for six days' service of John Hacker, as sergeant-at-arms to said committee; and the sum of four state paper dollars per day, for eight days' service of Edward Mundy, as clerk to another committee; to Richard M. Young, for services rendered as clerk to the select committee of the house of representatives appointed to inquire into the official conduct of the late president and directors of the Edwardsville branch bank, from the 27th of January until the 13th day of February inclusive, being sixteen days, at four state paper dollars per day, sixty-four dollars; to Singleton H. Kimmel for services rendered the same committee as sergeant-at-arms, fifteen days at four state paper dollars per day, sixty dollars; to Alexander Miller, cashier of the Edwardsville branch bank, for twelve days' attendance as a witness, at the request of the committee, at one dollar and fifty cents state paper per day, eighteen dollars; to Alexander Miller, for twelve days' hire of a horse and wagon to transport bank books, &c. to and from the seat of government, and for transporting books, &c. thirty dollars, state paper; to same for 5542 words in copies of records and correspondence, furnished at the request of the committee, at fifteen cents for every seventy-two words, eleven dollars and fifty cents, state paper; to William P. M'Kee, of Edwardsville, for twelve days' attendance as a witness, at the request of the committee, at one dollar and fifty cents state paper per day, eighteen dollars; to Nathaniel Buckmaster, of Edwardsville, for twelve [days'] attendance

T. Lippincott

T. Redman

A. Cowles

Clerk H. R.

Sec'y Senate

J. O. Wattles  
J. Hall, R. M.  
Young & S.  
M'Roberts

J. O. Wattles

J. Hacker

E. Mundy

R. M. Young

S. H. Kimmel

A. Miller

A. Miller

W. P. M'Kee

N. Buckmas-  
ter

as a witness, at the request of the committee, at one dollar and fifty cents state paper, per day, eighteen dollars; to T. J. M'Guire, for eight days' attendance as a witness, at the request of the committee, at seventy-five cents state paper per day, six dollars; to A. Field, late treasurer, for money by him expended, for clerk hire, house rent, fuel and stationary, six hundred and sixty-four state paper dollars; to A. Field

A. B. Dake Arnold B. Dake, late brigade inspector of the second brigade, second division Illinois Militia, sixty-four dollars, state paper; to John Caldwell, John Siddall and Thomas Vaught and J. F. Vought, each twenty-four dollars, state paper; to John Warnock, for postage on the public letters and documents, sixteen dollars and twenty-five cents, state paper; to B. Green, for furnishing benches in the lobby, and lock to the door, two dollars and fifty cents, state paper; the sum of seventy-five cents of state paper per day to J. Shaw, for his attendance on the committee as a witness, for six days; to James Whitlock, the sum of one hundred and fifty state paper dollars, for his assistance rendered the engrossing and enrolling clerks at the present session of the general assembly; to R. K. M'Laughlin, late treasurer, one hundred dollars, being the amount of a counterfeit bank note received by him while treasurer of the state; to Charles Prentice, four dollars state paper for half ream of writing paper; to John Turney, sixteen state paper dollars for his services as assistant secretary to the senate; to James M. Duncan, for room, fire wood, &c. furnished the judges when digesting the statutes, twenty-eight dollars and fifty cents, state paper; to Joseph Chance, for benches furnished the lobby of the senate, seven dollars, state paper; to Horatio Ball, the sum of five dollars, as secretary pro tem. of the senate; to William Nichols, the sum of five dollars, state paper, for administering the necessary oaths to the newly elected members of the senate.

**T J. M'Guire**

**A. B. Dake**

**J Caldwell, J. F. Vought and J. Warnock**

**B. Green**

**J. Shaw**

**J. Whitlock**

**R. K. M'Laughlin**

**C. Prentice**

**J. Turney**

**J. M. Duncan**

**J. Chance**

**H. Ball**

**W. Nichols**

[Approved, 17th Feb. 1827.]

## PARTIAL APPROPRIATION.

In force, 8th  
Jan. 1827

*AN ACT making a partial appropriation for the members and officers of the General Assembly.*

Appropriations to members and officers of general assembly

**SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the auditor of public accounts is hereby required to draw his warrant on the treasury for the sum of one hundred dollars in specie to each member of this general assembly, and a like warrant**

to the speaker of each house, the secretary of the senate, clerk of the house, to each of the engrossing and enrolling clerks, and door keepers of both houses; any law in this state to the contrary notwithstanding: *Provided*, That the auditor shall, if required, issue said warrant for state paper at the same rate that it is paid to other officers of government, at the time such warrant is issued.

[Approved, 8th Jan. 1827.]

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### AN ACT

*Making appropriations for building certain Bridges on the* In force  
Jan 23, 1827  
*Bounty Lands.*

SEC. 1. *Be it enacted by the People of the State of Illinois,* Appropriations to the counties of Peoria  
*represented in the General Assembly,* That the sum of two hundred dollars be appropriated and paid to the county of Peoria, for the purpose of building a bridge across Kickapoos creek, in said county; the sum of three hundred dollars to the county of Fulton for the purpose of building a bridge across Spoon river in said county; the sum of three hundred dollars to the county of Schuyler, for the purpose of building a bridge across Crooked creek, in said county; the sum of two hundred and fifty dollars to the county of Adams, for the purpose of building a bridge across Mill Creek, in said county; and the sum of two hundred and fifty dollars to the county of Pike, for the purpose of building a bridge across Bay Creek, in said county; said sums of money to be paid in state paper, at par: *Provided*, said bridges be erected on public highways and kept in repair, by the counties in which they are situated.

SEC. 2. The sites of said bridges shall be chosen by the county commissioners of the counties respectively in which they are to be erected; and the construction of them shall be under the control and direction of said commissioners. Sites chosen by commissioners  
And for the purpose of entering into contracts for the building of such bridges, the county commissioners of each of the counties aforesaid shall, previous to the first day of April next, give at least three weeks' notice under their signatures in each of the election precincts of the county, at the usual place of holding elections, of the day and hour when they will attend at the court house of their county, and let out the same to the lowest bidder; which notice shall also contain a description of the bridge to be built, and the time within which it is to be completed. Comm'r's to contract &c.  
And the person or persons who shall be the lowest bidder

Contractor to  
give bond

or bidders, shall have the contract, upon his or their entering into bond, with one or more sufficient securities, in double the amount of his or their contract, to the county commissioners of the county in which such bridge is to be built, for the use and benefit of such county, for the faithful performance of said contract.

When finish-  
ed auditor to  
issue warrants

SEC. 3. Whenever either of said bridges shall be completed, and the fact of its completion be certified by the county commissioners of the county in which such bridge shall be built, to the auditor of public accounts, he shall draw his warrant on the treasurer in favor of such commissioners for the sum appropriated by the first section of this act, for the purpose of building such bridge.

[Approved, Jan. 23d, 1827.]

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## ARBITRATIONS AND REFERENCES.

In force  
July 1, 1827

Disputants  
may agree to  
submit to ar-  
bitrators &c

By submission  
in writing and  
rule of court

Or by person  
at appearance  
& submission  
in open court

Judgment on  
award

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all persons desirous to end any dispute or controversy by arbitration, for which there is no other remedy but by action at law, or suit in equity, may agree that their submission to arbitration shall be made a rule of the circuit court, and may insert such their agreement in the submission, or in the condition of the bond or promise; which agreement, on producing an affidavit of the due execution thereof, and filing it in the court, may be entered of record, and a rule of court shall thereupon be made, that the parties shall submit to, and be finally concluded by such arbitration; or such persons desirous to end any dispute or controversy as aforesaid, may personally appear before the circuit court, and acknowledge that they have mutually agreed to refer all their matters of difference, or any particular dispute to the arbitrament of certain persons by them agreed on and named: on their desiring such submission to be made a rule of court, the same may be entered of record, and a rule of court shall be made, that the parties shall submit to and be finally concluded by such arbitration. In either of the above cases, when the award shall be for the payment of money only, the same being returned into, and accepted by the court, judgment shall be rendered thereon for the party in whose favor the award is made, to recover the sum awarded, to be paid to him, together with the costs of arbitration and the costs of court, and execu-

tion may issue thereon accordingly. No judgment shall be entered on any such award, unless it shall appear to the court that a copy of the award and notice to appear and shew cause why judgment should not be entered, on the same, has been previously served on the party to be charged with the judgment, at least four days before the motion for judgment shall be made: no judgment shall be entered on motion as aforesaid, after one year from the time of making the award.

SEC. 2. When the award shall be for the performance of any thing other than the payment of money, the same being returned into and accepted by the court as aforesaid, obedience thereto may be enforced in the said court, by attachment, in the same manner, as obedience may be compelled to any other rule of court.

SEC. 3. Any arbitration, umpirage or award, procured by corruption or undue means, shall be judged void, and may be set aside in law or equity; in equity, by proceedings on original bill, and at law, on motion in the court where submission is made a rule of court, or where any suit or proceedings shall be instituted on the arbitration bond, submission or award. Complaint must be made of such corruption or undue practice, before final judgment upon the said bond, submission or award.

SEC. 4. When any personal action shall be pending in the circuit court, and the parties desire to refer the same, it may be done by a rule of the court, the report of the referees being approved by the court, and entered of record, shall have the same effect as the verdict of a jury, and the like judgment shall be entered upon it as if the same finding had been by a jury; the costs of the reference shall be taxed with the other costs of the suit.

SEC. 5. The several clerks of the circuit courts and the justices of the peace in their several counties, may issue subpoenas for the attendance of witnesses before arbitrators and referees: If any witness, after being duly summoned, shall fail to attend, the arbitrators or referees may issue an attachment to compel his attendance, and the said witness shall moreover be liable to the party for refusing to attend the same as in trials at law. The arbitrators and referees may administer oaths and affirmations to witnesses; may punish contempts committed in their presence during the hearing of a cause, the same as a court of record; may continue the hearing of a cause from time to time upon good cause shewn, and may admit depositions to be read in evidence, the same as in trials at law.

SEC. 6. Each arbitrator and referee shall before he

No judgment shall be entered unless it appear that a copy of the award and notice to the opposite party four days before motion for judgment

Obedience may be enforced

An award or umpirage procured by corruption, void

Objection to be made before judge.

How actions pending may be referred

Process may issue for witnesses to attend before arbitrators

Penalties for witnesses refusing

Arbitrators may administer oaths, and punish for contempt

May continue cause

**Arbitrators to be sworn**

proceeds to the duties of his appointment take an oath or affirmation, faithfully and fairly to hear and examine the cause in question, and to make a true and just report or award, (as the case may be,) according to the best of his skill and understanding; which oath or affirmation, any judge or justice of the peace of this state is authorized and required to administer.

**Their compensation**

SEC. 7. Each arbitrator and referee shall be allowed for every day's attendance to the business of his appointment, one dollar, to be paid in the first instance, by the party in whose favor the award or report shall be made, but to be recovered of the other party with the other costs of suit if the award or report shall entitle the prevailing party to recover costs. Witnesses shall receive the same fees for attendance at arbitrations and references, as shall be allowed them in the circuit courts. Sheriffs, constables, clerks and justices of the peace, shall be entitled to the same fees for services performed in relation to any arbitration or reference, as shall be allowed by law for the like services in their respective courts.

**Former acts repealed**

SEC. 8. The act entitled "An act authorizing and regulating arbitrations," approved February 25, 1819, is hereby repealed.

This act to take effect from the first day of July next.

[Approved, Jan. 6, 1827.]

## ATTACHMENTS.

In force 1st  
June, 1827.

### *AN ACT concerning Attachments.*

**On complaint attachments may be issued by the clerks of the circuit courts**

**Nature of the complaint**

**Substacee of writ of attachment**

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That if any creditor or his agent, shall make complaint, on oath or affirmation, to the clerk of the circuit court of any county in this state, that his or her debtor is about to depart this state, or has departed from this state, with the intention in either case of having his effects and personal estate removed without the limits of this state, or stands in defiance of any officer, authorized to arrest him or her, on civil process, so that the ordinary process of law, cannot be served on such debtor; and if such creditor or his agent shall also make oath or affirmation, that such debtor is indebted to such creditor in a sum exceeding twenty dollars of lawful money of the United States, specifying the amount and nature of such indebtedness, it shall be lawful for such creditor, to sue, or cause to be sued out of the office of the said clerk;*

a writ of attachment, directed to the sheriff of the county, in which he is clerk, returnable as other writs are, to the circuit court for said county, commanding him to attach the said debtor, by all and singular, his or her lands and tenements, goods and chattels, rights and credits, moneys and effects, of what nature soever, or so much thereof as will be sufficient to satisfy the debt so sworn to, with interest and costs of suit, in whose soever hands or possession the same may be found in his bailiwick. It shall be lawful for such sheriff to serve and levy such attachment upon the lands and tenements, goods and chattels, rights and credits, moneys and effects of such debtor, within his bailiwick, <sup>How served.</sup> wherever the same may be found, or in the hands of any person indebted to, or having any effects of such debtor, and to summon such person as garnishee, to appear at the court to which the attachment is returnable, there to answer upon oath or affirmation, what amount he or she is indebted to the defendant in the attachment, or what effects of such defendant he or she hath in his or her hands, or had, or was indebted at the time of serving such attachment, and what effects, or debts of the defendant there are in the hands of any other person or persons, to his or her knowledge or belief: which attachment, being duly returned served, and setting forth in what manner such service has been made, and if, on a garnishee, the court may thereupon compel such garnishee to appear and answer as aforesaid, there shall be allowed to such garnishee, out of the effects attached, a reasonable sum, for his or her attendance.

SEC. 2. When any person who shall be an inhabitant of any state, territory or country, without the limits of this state, so that he or she cannot be personally served with process, shall be indebted to any person a resident of this state, and hath any estate, real or personal, within the same, any of the said clerks may issue an attachment against such estate of such foreign person under the rules, restrictions and regulations in this act contained, so far as the same shall be applicable; and on the further <sup>When & how attachment may issue</sup> condition that the person praying such attachment, his agent or attorney shall, in addition to the oath or affirmation of the non-residence of the debtor or debtors, and the sum due; also, swear or affirm that he or she verily believes, he or she is unable to collect his or her debt so due from such debtor or debtors, by due course of law, in the state or territory, or place of residence of such debtor or debtors; which place of residence, if known, shall also be set forth with usual or common certainty.

SEC. 3. When two or more persons, not residing in

<sup>Additional</sup>  
<sup>oath of plff</sup>

**Attachments  
against joint  
debtors where  
both are non  
resident**

this state, are jointly indebted, either as joint obligors, partners or otherwise, then the writ or writ of attachment shall and may be issued against the separate and joint estate of such joint debtors, or any of them, either by their proper names, or by, or in the name or style of the partnership, or by whatever other name or names, such joint debtors shall be generally reputed, known or distinguished within this state, or against the heirs, executors or administrators of them, or either, or any of them, and the lands and tenements, goods and chattels, rights, credits and effects of such debtors, or either, or any of them, shall be liable to be seized and taken for the satisfaction of any just debt or other legal demand, and may be sold to satisfy the same. The oath or affirmation of non-residence and indebtedness shall be made before, and filed with the clerk of the circuit court of the county from whence the attachment issues, and shall also state the residence of the debtors, and the inability to collect the demand at the place of residence of the debtors as is required in the preceding section.

**If plaintiff be  
absent he may  
act by agent**

SEC. 4. If the creditor or plaintiff in the attachment be absent from, or non-resident of this state, it shall, and may be lawful for such creditor, by himself or agent, or attorney, to attach the estate and property of his debtor, both real and personal, that may be found in this state, in any or all of the cases provided for by this act, and the oath or affirmation required by any of the preceding sections may be made by such agent or attorney, and the like proceedings may be had thereon, as if such oath or affirmation had been made by the creditor or plaintiff in proper person.

**Oath not re-  
quired in cer-  
tain cases**

SEC. 5. So much of the oath or affirmation in the second and third sections as requires the creditor, or his agent or attorney to state that he or she is unable to collect the amount of his or her debt or demand, from his or her debtor or debtors, by due course of law, in the state or place of the residence of such debtor, shall not be required when the debtor was a resident of this state at the time of contracting such debt, or creating such demand.

**Justices may  
issue attach-  
ments in cer-  
tain cases**

SEC. 6. If any creditor, his, her or their agent shall make oath to a justice of the peace of any county in this state, that any person is indebted to such creditor, in a sum of not less than five nor more than twenty dollars, and such debtor so absconds or conceals himself or herself, or stands in defiance of a peace officer authorized to arrest him or her on civil process, so that a warrant cannot be served on him or her, such justice shall take bond and security, as in this act is directed, and grant an attachment

against so much of the personal estate of such debtor as shall be of value sufficient to satisfy the debt and costs of the party praying such attachment, directed to any constable of his county, and returnable before himself; who shall and may proceed thereon in all respects where necessary, as upon an attachment returnable to any court of record under this act.

SEC. 7. Every clerk before granting an attachment as aforesaid, shall take bond and security from the party for whom the same shall be issued, his or her agent or attorney, payable to the defendant in double the sum for which the complaint shall be made, conditioned for satisfying all costs which may be awarded to such defendant, in case the plaintiff suing out the attachment therein mentioned, shall be cast in the suit; and also, all damages which shall be recovered against the plaintiff for wrongfully suing out such attachment: which bond, with the affidavit or affirmation of the party complaining, his or her agent or attorney, shall be filed in the office of the clerk granting the attachment. Every attachment issued without bond and affidavit taken and returned as aforesaid, is hereby declared illegal and void, and shall be dismissed.

SEC. 8. To prevent errors in issuing attachments and taking bonds, the attachment and the condition of the bond, shall be in the form or to the effect following, viz.

“The people of the state of Illinois to the sheriff of Form of the attachment.  
county, Greeting:

Whereas, A. B. (or \_\_\_\_\_ agent or attorney of A. B. as the case may be) hath complained on oath (or affirmation) to \_\_\_\_\_ clerk of the circuit court of \_\_\_\_\_ county, that C. D. is justly indebted to the said A. B. to the amount of \_\_\_\_\_ and oath (or affirmation) having been also made that the said C. D. resides out of this state, or absconds or conceals himself or herself, or stands in defiance of a civil officer authorized to arrest him or her with civil process so that the ordinary process of law cannot be served upon him, or is about to depart this state, with intention to have his effects and personal estate removed without the limits of the same, or has left the state with the intention of having his effects and personal estate removed therefrom, (as the case may be,) and the said \_\_\_\_\_ having given bond and security according to the directions of the act in such case made and provided:

WE THEREFORE COMMAND YOU, That you attach so much of the estate, real or personal of the said C. D. to be found in your county, as shall be of value sufficient to

Bond, &c re-  
quired of plff

Attachments  
issued with-  
out are void

## ATTACHMENTS.

satisfy the said debt and costs, according to the complaint: and such estate so attached in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon, according to law, at a court to be holden at        for the county of        upon the        day of

next, so as to compel the said C. D. to appear and answer the complaint of the said A. B.; and that you also summon        as garnishee, to be and appear at the said court on the said        day of        next: then and there to answer what may be objected against him: when and where you shall make known to the said court how you have executed this writ. And have you then there this writ.

Witness,        Judge of the said court, this        day of        in the year of our Lord, &c.

Which attachment shall be signed by the clerk and the seal of the court affixed thereto.

The condition of this obligation is such, that whereas the above bounden        hath on the day of the date hereof, prayed an attachment at the suit of        against the estate of the above named        for the sum of and the same being about to be sued out, returnable on the

day of        next, to the term of the court then to be holden. Now if the said        shall prosecute his suit with effect, or, in case of failure therein shall well and truly pay and satisfy the said        all such costs in said suit, and such damages as shall be awarded against the said        his heirs, executors or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect." No attachment shall be abated or dismissed, for want of form, if the essential matters expressed in the foregoing precedents, be substantially set forth.

Duty of the officer.

SEC. 9. Upon the service of every writ of attachment, it shall be the duty of the officer serving the same, to take the estate and property so attached, into his possession, in whose custody or possession soever the same may be; and the estate and property shall remain in the safe keeping and care of the said officer, in order to answer and abide the judgment of the court, unless the person or persons in whose possession the same may be found, shall enter into bond and security to the officer, to be approved by such officer, in double the sum for which such attachment shall have issued, with condition that the said estate and property shall be forthcoming, to answer the judgment of the court in said suit.

Attachments  
may be reple-  
vied by giving  
bond.

SEC. 10. All attachments returnable to a circuit court shall be repleviable before writ of enquiry executed, on

the appearance of the defendant, and putting in good special bail, or by giving bond before the return day of the attachment, to the sheriff or other officer serving the same; which bond, such sheriff or other officer, is hereby authorized and required to take, conditioned to appear at the time and place, to which such attachment is made returnable, and to abide by, and perform the order and judgment of the court. And upon the defendant or defendants replevying any attached effects, by giving bond and security as aforesaid, the sheriff or officer shall return such bond so taken to the court, before whom the attachment is returnable, on the first day of the term thereof. If such bond shall be forfeited by reason of the defendant or defendants, failing to appear and give special bail as aforesaid, the sheriff may assign such bond to the plaintiff in the attachment by a writing thereon under his hand, in the presence of two or more credible witnesses, and after such assignment, the plaintiff may bring a suit in his own name thereupon. If the plaintiff will not accept such assignment of such bond, and the court shall adjudge such security insufficient, such sheriff shall be subject to the same judgment and recovery, and have the same liberty of defence as if he had been made defendant in the attachment, unless good and sufficient security shall be given, and bond filed during the term of the court to which such attachment is returnable, and at which term the objections to the sufficiency of the security taken, shall be made to entitle the party suing out the attachment, to proceed against the sheriff, and execution may issue thereupon as in other cases of judgment. And whenever the judgment of the plaintiff or any part thereof, shall be paid or satisfied by any such sheriff, he shall have the same remedy against the defendant for the amount so paid by him, as is now provided by law for bail against their principal, where a judgment is paid or satisfied by them. He shall likewise have the same remedy on a bond of a garnishee, which shall be adjudged insufficient, as is or may be provided on bonds or security given for the appearance of a defendant in a civil action.

SEC 11. If the sheriff shall fail to return a bond taken by virtue of the provisions of the preceding sections of this act within the time therein prescribed, or shall have neglected to take one where he ought to have done so; in any attachment issued under any of the provisions of this act, the plaintiff in the attachment may cause a rule to be entered at any time during the two first days of the term to which the writ is returnable; requiring the said sheriff to return the said bond; in case no bond has been taken to

Remedy on such bond.

Proceedings against sheriff for taking insufficient security.

Remedy of the sheriff against the defendant.

A rule may be entered against the sheriff to return such bond, or shew cause why he did not take one.

In default of such return or of good cause shewn, judgment to be entered a gainst the sherrif.

Court may stay proceedings on attachments against non-residents

And order notice thereof to be published.

When and how notice shall be given.

Defendant may appear, put in special bail and plead

shew cause why such bond was not taken. If the said sheriff shall not return the said bond within one day thereafter, or shew legal and sufficient cause why the said bond had not been taken, judgment shall be entered up against him for the amount of the plaintiff's demand, with costs of suit; execution may thereupon issue for the same whenever judgment shall have been entered against the defendant in the attachment.

SEC. 12. In all suits commenced and prosecuted by attachment against the estate of any person or persons residing out of the state, where the amount claimed shall exceed twenty dollars, the court where the same may be pending, shall stay all proceedings in such suit, for such time as it may think necessary, not less than three nor more than twelve months, from the return day of such attachment. And the court may order notice of the attachment to be inserted in some public newspaper within this state, specifying therein, at whose suit, against whose estate, for what sum, and from what court such attachment issued, and that, unless the defendant shall appear, give special bail, and plead within the time limited for his or her appearance in such case, judgment will be entered, and the estate so attached will be sold. If the defendant appear, put in bail and plead as aforesaid, his estate so attached, shall be liberated, and the garnishee or garnishees, if any, discharged.

SEC. 13. On the return of any writ of attachment against a defendant, who had departed, or was about to depart from this state, with the intention of having his effects and personal estate removed beyond the limits of this state, or who has absconded therefrom, or concealed himself or herself, or stood in defiance of any officer authorized to arrest him or her, on civil process, so that the ordinary process of law could not be served on him or her, it shall be the duty of the clerk of the court in which the suit is pending, to give notice for four weeks successively, in some newspaper published in this state, most convenient to the place where the court is held, of such attachment, and at whose suit, against whose estate, for what sum, and before what court the same is pending; and that unless the defendant shall appear, give special bail, and plead within the time limited for his or her appearance in such case, judgment will be entered, and the estate so attached will be sold. If the defendant appear, put in sufficient bail and plead as aforesaid, his estate, so attached, shall be liberated, and the garnishee or garnishees, if any, discharged.

SEC. 14. If any attachment as aforesaid, shall be re-

turned executed, and the estate attached shall not be re-Defendant not  
plevied, or defence shall not be made, as this act directs, appearing,  
the plaintiff shall be entitled to judgment for his whole judgment may  
debt and costs, having established the existence of such b. had against  
him.  
debt, by legal testimony, and may thereupon take execu-  
tion for the same, according to law, as provided in other  
cases of debt. All the estate attached, and not replevied  
as aforesaid, shall be sold for, and towards satisfying the  
plaintiff's judgment in the same manner as such property  
is required to be when taken in execution on a writ of  
*fieri facias*. Where an attachment shall be returned serv-  
ed, in the hands of any garnishee, it shall be lawful upon Proceedings  
his or her appearance and examination in the manner as is  
by this act directed, to enter up judgment, and award  
execution against every such garnishee, judgment having  
been first entered against the original debtor, for all sum  
or sums of money due from him or them to the defendant  
in the attachment or in his, her or their custody, or pos-  
session, for the use of such original debtor, or so much  
thereof as shall be of value sufficient to satisfy the debt  
and costs of the complaint. All goods and effects what-  
soever in the hands of any garnishee or garnishees, be-  
longing to such defendant, shall also be liable to satisfy  
such judgment.

Sec. 15. Where any garnishee shall be summoned by  
the sheriff or other officer, in manner aforesaid, and shall  
fail to appear and discover on oath or affirmation, as by  
this act is directed, it shall be lawful for the court after  
solemnly calling the garnishee, and such court is hereby  
authorized and required to enter a conditional judgment  
against such garnishee, and thereupon a *scire facias* shall  
issue against such garnishee, returnable to the next term  
of the court, to shew cause, if any he have, why final  
judgment should not be entered against him; upon such  
*scire facias* being duly executed and returned, if such  
garnishee shall fail to appear accordingly, and discover  
on oath or affirmation, in manner aforesaid, the court shall  
confirm such judgment, and award execution for the  
plaintiff's whole judgment and costs; and if upon the ex-  
amination of any garnishee, it shall appear to the court,  
that there is any of the defendant's estate in the hands of  
any person or persons, who have not been summoned, such  
court shall, upon motion of the plaintiff, grant a judicial  
attachment, to be levied upon the property in the hands of  
such person or persons, having any of the estate of the  
defendant in his, her or their possession or custody, who  
shall appear and answer, and be liable as other garnishees.  
Where any garnishee shall deliver to the sheriff all the

Garnishees  
not appearing  
the court may  
enter a condi-  
tional judg't.

Upon which  
*scire facias*  
may issue.

Garnishee to  
make discov-  
ery on oath.

Judicial at-  
tachment  
may be issued  
against such  
as have not  
been summon-  
ed as garni-  
shees.

## ATTACHMENTS.

Property delivered up by garnishees to be received in discharge of the judgment.

No judgment to be rendered against garnishee unless his debt be due.

Plaintiff may file interrogatories, which the garnishee shall answer on oath.

If the plaintiff be dissatisfied with such answer the court may empanel a jury to enquire, &c.

goods, chattles and effects whatsoever found or confessed to be in his or her possession, belonging to the defendant, or any part thereof, the same shall be received in discharge of so much of the judgment, as the same shall be appraised to, by the jury aforesaid, who shall inquire and return the value thereof, according to the evidence which may be submitted to them relative thereto. If it shall appear that the debt of any such garnishee to such defendant is not yet due, which fact shall also appear by the finding of the jury, and the time when it becomes due, then execution shall be stayed against such garnishee until the same shall become due; nothing in this act shall be construed to authorize a judgment to be rendered against a garnishee for a debt, which may be due on a negotiable instrument, unless such debt shall be due at the time of rendering the judgment.

SEC. 16. If any such writ of attachment shall be served as aforesaid, it shall and may be lawful for any such plaintiff, at any time during the return term of the said court, to prepare, exhibit and file, all and singular such allegations and interrogatories in writing, upon which he or she shall be desirous to obtain, and compel the answer of any and every garnishee, touching the lands, tenements, goods, chattles, moneys, credits and effects of the said defendant, and the value thereof, in his, her or their possession, custody, or charge, or from him, or her, or them, due and owing to the said defendant, at the time of the service of the said writ, or at any time after, or which shall, or may thereafter become due; and it shall be the duty of each and every such garnishee, to exhibit and file, under his oath or affirmation, on or before the third day of the next succeeding term, full, direct and true answers, to all and singular, the allegations and interrogatories by the said plaintiff, supported, exhibited, and filed, in the manner herein before directed and described.

SEC. 17. Whenever the plaintiff, in any attachment, shall allege that any garnishee summoned in such attachment hath not discovered the true amount of debts due from him to the defendant, or what goods and chattles, belonging to the defendant, are in his or her possession, the court shall direct without the formality of pleading, a jury, to be empanelled immediately, (unless good cause be shewn by either party for a continuance) to enquire what is the true amount due from such garnishee to the defendant; and what goods and chattels are in his possession, belonging to the defendant. If the finding of the jury shall be against such garnishee, the court shall grant judgment in the same manner as if the facts found by the jury

had been confessed by him or her, on his or her examination, and costs of inquest; and if the jury find in favor of inquest, the garnishee, he shall recover his costs against the plaintiff.

SEC. 18. Where any witness resides out of the state, or out of the county in which any attachment may be pending, and in which the testimony of such witness may be required, it shall be lawful for either party or garnishee in such attachment, on filing interrogatories with the clerk of the court, from which such attachment has issued, and giving ten days notice of the time and place of taking such testimony, by serving a copy of such notice on the opposite party; or if such party shall be absent from, or reside out of the county, then by affixing a notice in writing thereof, on the door of the court house of such county, at least ten days before the day set for the taking thereof, to obtain a commission from the clerk of the court, to take the testimony of such witness or witnesses on such interrogatories. Such examination may be read on the trial, on motion of either of the parties or garnishees.

SEC. 19. In all cases of attachment, any person, other than the defendant, claiming the property attached, may interplead without giving bail, but the property attached shall not thereby be replevied, and the court shall immediately (unless good cause be shewn by either party for a continuance) direct a jury to be empanelled to inquire into the right of property; in all cases where the jury find for a claimant, such claimant shall be entitled to his costs, and where the jury find for the plaintiff in the attachment, such plaintiff shall recover his costs against such claimant.

SEC. 20. If judgment by default shall be entered on any attachment against the estate of the defendant, in any court of this state, no execution shall issue thereon, except against the goods and chattels, lands and tenements, on which the attachment may have been served, or against a garnishee or garnishees, who shall have money or other property in his or their hands, belonging to the defendant, if the defendant shall appear, put in bail and plead to the suit, the judgment rendered therein shall have the same force and effect as if a *capias ad respondendum* had been served on the person of the defendant.

SEC. 21. When any goods and chattels shall be levied on by virtue of any attachment, and the sheriff or other proper officer in whose custody such goods and chattels are, shall be of opinion that the same are of a perishable nature, and in danger of immediate waste and decay, such sheriff or other officer, as aforesaid, shall summon three

How depositions may be taken by the parties and garnishees.

Persons other than the deft. claiming the property may interplead without giving special bail.

Executions on judgments by default in attachment shall be issued against the attached effects only, or against garnishees, &c.

Perishable property levied upon by attachment may be sold.

How such property shall be ascertained to be perishable.

respectable freeholders of his county, who shall examine the goods and chattels so levied on; and if the said freeholders shall, on oath or affirmation, certify that, in their opinion, they are of a perishable nature, and in danger of immediate waste and decay, and if the person or persons, to whom such goods and chattels belong, his, her or their agent or attorney, shall not within twenty days after serving such attachment, replevy the same, then such goods

Advertise the sale.

and chattels shall be sold at public vendue by the sheriff or other proper officer, he having first advertised such sale at the court house and two other public places in his county, at least ten days before the sale; the money arising from such sale shall be liable to the judgment obtained upon such attachment, and deposited in the hands of the clerk of the court, to which the process shall be returnable, there to abide the event of such suit.

Proceeds of sale to satisfy judgment.

SEC. 22. When any sheriff or other officer shall serve an attachment on slaves, or indentured or registered colored servants, or horses, cattle, or live stock, and the same shall not be immediately replevied, or restored to the debtor, it shall and may be lawful for such officer, and he is hereby required to provide sufficient sustenance for the support of such slaves, indentured, or registered colored servants, and live stock, until the same shall be sold, or otherwise legally disposed of, or discharged from such attachment. They shall receive therefor a reasonable compensation, to be ascertained and determined by the court out of which the attachment issued, and the same shall be charged in the fee bill of such officer, and shall be collectable as part of the costs in the attachment.

Compensation of sheriff, &c

SEC. 23. No suit or writ of attachment shall abate by the death of either party, where the cause of action would survive to the executor or administrator; but such death, being suggested upon the record, the cause shall proceed under the regulation following: "Whenever a plaintiff in an attachment shall die, the executor or administrator of such plaintiff shall, within three months, after the probate of the will, and obtaining letters testamentary, or after obtaining letters of administration, cause to be issued by the clerk of the court in which such attachment is pending a *scire facias*, returnable to the next term of the said court, giving notice of his intention, to become a party in the place and stead of the deceased testator or intestate; which shall be published at least four weeks successively in some newspaper published within this state, previous to the commencement of the term of such court, to which such *scire facias* is returnable, proof of which being exhibited to the court, such executor or administrator may on motion,

Attachments not to abate by the death of parties.

Executor or administrator may become a party by giving notice

be made plaintiff therein, and the cause shall thereupon proceed. And where the defendant shall die, a *scire facias* shall issue in manner aforesaid, immediately after the expiration of two months; which *scire facias*, shall contain a notice to the legal representatives of the defendant, whether executor, administrator or heirs, of the pendency of such attachment, and of the intention of the plaintiff to proceed with the same; which being published in like manner for four weeks successively, before the sitting of such court, in the case of an absconding or concealed debtor, or one who was standing in defiance of an officer, at the time of suing out such attachment, or one who intended to depart, or had departed from the state with the intention of removing his effects and personal estate, beyond the limits of this state; and in the case of a non-resident debtor, in some newspaper printed in this state, four times before the first day of the term of such court, and proof of such publication, being exhibited to said court to the satisfaction thereof, it shall be lawful for the plaintiff to proceed with his attachment, as if such death had not taken place. The executor, administrator, or other legal representative of the defendant, may appear at the return of the *scire facias*, and upon giving bond and security upon the same terms, and for the performance of the same conditions, that the defendant would have been required to give by this act, if living, shall be permitted to plead, and defend the said attachment, in the same manner as his testator, intestate, or ancestor might have done.

SEC. 24. Any defendant against whom an attachment may be sued out, under the provisions of this act, or garnishee, may avail himself in his defence of any set off properly pleadable by the laws of this state, notwithstanding such set off, may not be due, at the time of suing out such attachment, or at the trial thereof: any claim due, or not due, may be set off by the garnishee, whether it exist against the plaintiff or defendant in the attachment.

Set off is allow-  
ed altho' not  
due

Garnishee  
may set off  
claim against  
piff or deft

In case two or  
more attach-  
ments are is-  
sued against  
same deft and  
property at-  
tached be in-  
sufficient,  
plaintiff shall  
receive pro-  
portionable  
part

SEC. 25. In all cases where more than one attachment shall be issued against the same person or persons, and returned to the same term of the court to which they are returnable, and judgment shall be rendered therein, against the defendants, or against the defendants and garnishee or garnishees, or where a judgment in a civil action shall also be rendered at the same term against the defendant who is the same person and defendant in the attachment or attachments, the court shall direct the clerk to make an estimate of the several amounts each attaching or judgment creditor will be entitled to out of the property of the defendant, attached either in the hands of any

## ATTACHMENTS.

garnishee, or otherwise, after the sale, and receipt of the proceeds thereof by the sheriff, calculating such amount in proportion to the amount of their several judgments, with costs, as the same will respectively bear to the amount of the sum received, so that each attaching and judgment creditor will receive his just part thereof in proportion to his respective demand, the clerk shall thereupon certify the several amounts thereof to the sheriff, who shall pay over to the respective parties, the several sums so certified, and endorse such payments on their respective executions.

Attachments  
in certain cas-  
es served on  
Sunday

SEC. 26. On proof being made before any judge or justice of the peace, or clerk of the circuit court within this state that a debtor is actually absconding, or concealed, or stands in defiance of an officer duly authorized to arrest him on civil process as aforesaid, or has departed this state, with the intention of having his effects and personal estate removed out of the state, or intends to depart with such intention, it shall be lawful for the clerk to issue, and sheriff or other officer to serve an attachment against such debtor on a Sunday, as on any other day, as is directed in this act.

writs of error  
or appeal  
may be pros-  
ecuted

SEC. 27. The plaintiff or defendant in any attachment, the garnishee and the sheriff, or either of them, who may feel aggrieved by the judgment of the court, may prosecute writs of error, and take appeals, as by law is provided in other cases in the circuit courts, and be entitled to recover their costs, as in other cases.

This act shall  
be construed  
liberally for  
detection of  
fraud

SEC. 28. This act shall be construed in all courts of justice in the most liberal manner for the detection of fraud.

Certain laws  
repealed

SEC. 29. All acts, and parts of acts, coming within the intent, spirit and meaning of this act, and the objects and proceedings to which it relates, and heretofore in force in this state, are hereby repealed. No proceedings, however, had, or rights secured under them shall be in any way impeded or impaired, but may be prosecuted and enforced, as if this act had not taken effect.

This act to take effect on the first day of June next.

[Approved, Jan. 24, 1827.]

## ATTORNEYS.

*AN ACT relating to the Attorney General and State's Attorneys.*

In force 19th  
Feb. 1827.

**SEC. 1.** *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the attorney general shall continue to reside in, and perform the duties of said office, for the first judicial circuit of this state. It shall be his duty to attend at each circuit court to be held in each of the counties belonging to said judicial circuit, and to commence and prosecute all actions, suits, process, indictments and prosecutions, civil and criminal, in which the people of this state, the president and directors of the State Bank of Illinois, or any county within such judicial district may be concerned; to defend all actions brought within said judicial district, against the auditor of public accounts, state bank, or any of the counties aforesaid, to prosecute all forfeited recognizances, and all suits and actions for the recovery of debts, revenues, monies, fines, penalties and forfeitures, accruing to the people of this state, or any county within the judicial district aforesaid. He shall give his opinion without fee or reward, to any county commissioners' court, and to any justice of the peace within his circuit, when required so to do, upon any question of law relating to any criminal or other matter, in which the people, or any county is concerned; and he shall perform such other and further duties, as may be enjoined on him by law.*

Duties of at-  
torney gener-  
al

**SEC. 2.** *It shall be the duty of the attorney general to attend each of the terms of the supreme court, and there commence, prosecute or defend every case that the people of this state, the auditor of public accounts, the state bank or any county of this state shall in any wise be a party to, or interested in the result. It shall be his further duty to prosecute all impeachments which may be tried before the supreme court or the senate of this state. He shall also, when required, give his opinion and advice in writing, without fee or reward, to the general assembly, or either branch thereof, upon any question of law; and to the governor, or the person exercising the office of governor, the secretary of state, auditor of public accounts, and state treasurer, upon any question of law relating to the duties of their respective offices, which may be submitted to him by them or either of them.*

To attend  
sup. court

Prosecute-  
impeach-  
ments and  
advise the of-  
ficers of gov-  
ernment

**SEC. 3.** *There shall be appointed by the governor, at the present session of the general assembly, by and with the advice and consent of the senate, one state's attorney,*

States' attor-  
neys to be ap-  
pointed

for each judicial circuit in this state, except the circuit in which the attorney general resides, and the person so appointed shall be commissioned by the governor, to continue in office for four years from and after his appointment; and when any additional judicial circuit shall hereafter be created, it shall be filled, and the person commissioned in like manner, to continue in office as aforesaid: Each state's attorney shall reside within the circuit for which he is appointed, and shall do and perform all the duties, within the judicial circuit in which he shall reside, which are, by the first section of this act, required of the attorney general, in the circuit in which the said attorney general shall reside: and each of said state's attorneys shall perform such other duties as may be enjoined on them by law.

To attend examinations on writs of habeas corpus

SEC. 4. It shall be the duty of the attorney general and state's attorneys to attend, if in their power, the examination of all persons brought on habeas corpus before a judge of the supreme or circuit court, within their circuits respectively; and, if convenient, shall attend the examinations, within their respective circuits, of persons accused of felonious crimes, on being notified of the same.

Court may appoint competent person to prosecute in certain cases

SEC. 5. When the attorney general, or any state's attorney, shall be interested in any cause or proceeding, civil or criminal, which it is, or shall be made his duty to prosecute or defend, the court in which such cause is pending, or to be brought, may appoint some competent person to prosecute or defend such cause, and in all cases, where the attorney general or state's attorney shall be absent or sick, and unable to attend to the discharge of his duties, the court in which any of his duties are required to be performed, may appoint some competent person to discharge such duties, until the attorney general or state's attorney appear and resume the discharge of his duties; and the person so appointed shall possess the same power in relation to such causes and the business in such court, and shall be entitled to the same fees therefor, as would have been allowed to the attorney general or state's attorney for said services.

Att. gen. may call on state's attorneys to assist

SEC. 6. The attorney general shall have a right to call upon any of the state's attorneys to assist him in the prosecution, or in the defence of any suit in the supreme court, or the trial of any impeachment which it shall be the duty of the attorney general to attend to; and any state's attorney being so required shall give his assistance accordingly.

Laws repealed

SEC. 7. The act entitled "An act for the appointment of circuit attorneys, and defining their duties and the du-

ties of the attorney general," approved March 23, 1819, and the act entitled "An act supplemental to an act entitled 'An act for the appointment of circuit attorneys and defining their duties, and the duties of the attorney general,' approved March 23, 1819," approved January 18, 1825, be, and the same are hereby repealed.

This act to take effect from and after its passage.

[Approved, Feb. 17, 1827.]

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## AUDITOR'S WARRANTS.

*AN ACT relative to the disbursements at the Treasury, and the mode of issuing and redeeming Auditor's Warrants.*

In force 19th  
Feb. 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases where the sum to be paid out of the state treasury is evidently intended to be in dollars and cents, and not in state paper at par, the auditor shall issue his warrant for such amount of state paper, as shall be deemed equivalent to the sum due; such amount to be ascertained as follows, to-wit: the discount at which state paper shall be paid out of the state treasury, shall be fixed by the secretary of state, auditor of public accounts, state treasurer, and cashier of the state bank, who shall, on the 29th days of March, June, September and December, in each year, until the month of March, 1830, meet at the auditor's office for that purpose: *Provided however,* that state paper shall, until the 29th day of March next, be paid out of the state treasury at the price fixed by the above mentioned persons in December last: and it shall not be paid out of the state treasury after the 29th day of June next at a greater discount than twenty-seven and a half per cent; after the 29th day of September next, it shall not be paid out at a greater discount than twenty-five per cent; after the 29th day of December next, it shall not be paid out at a greater discount than twenty-two and a half per cent; after the 29th day of March, 1828, it shall not be paid out at a greater discount than twenty per cent; after the 29th day of June, 1828, it shall not be paid out at a greater discount than seventeen and a half per cent; after the 29th day of September, 1828, it shall not be paid out at a greater discount than fifteen per cent; after the 29th day of December, 1828, it shall not be paid out at a greater discount than twelve and a half per cent; after the 29th day of March, 1829, it shall not be paid out at a greater

Warrants to  
be equivalent  
to state paper

State paper  
to be valued  
by secretary  
of state &c

Discount on  
state paper  
regulated

discount than ten per cent; after the 29th day of June, 1829, it shall not be paid out at a greater discount than seven and a half per cent; after the 29th day of September, 1829, it shall not be paid out at a greater discount than five percent; after the 29th day of December, 1829, it shall not be paid out at a greater discount than two and a half per cent; and after the 29th day of March, 1830, it shall not be paid out of the state treasury otherwise than at par.

[Approved, 19th Feb. 1827.]

In force first  
June, 1827.

## BAIL.

### *AN ACT concerning Special Bail.*

**SEC. 1.** *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all actions to

**When bail  
may be require  
ed** be commenced in any court of record in this state, and founded upon any speciality, bill or note in writing, or on the judgment of any court, foreign or domestic, and in all actions of covenant and account, and actions on verbal contracts or assumpsits in law, in which the plaintiff or other credible person can ascertain the sum due, or damages sustained, and that the same will be in danger of being lost, or that the benefit of whatever judgment may be obtained will be in danger, unless the defendant or defendants, be held to bail, and shall make affidavit thereof before the clerk of the court from which process issues, or a justice of the peace of this state; or if the plaintiff reside out of this state, before any judge of a court of record, or notary public or officer of the state or kingdom in which he resides, or may be duly authorized to administer an oath; and such affidavit shall be delivered to such

#### Affidavit.

**Duty of clerk  
and sheriff** clerk, he shall issue a *capias* and endorse thereon an order or direction to the sheriff or officer to whom such process shall be directed, to hold the defendant or defendants to bail, in the sum so specified in such affidavit; and it shall be the duty of the sheriff or officer serving such process, to take bail accordingly. In actions sounding merely in

**When the ac  
tion sounds  
in damages on  
ly, what the  
affidavit shall  
set forth** damages, where the same cannot be ascertained as aforesaid, the affidavit shall also set forth the nature and cause of the action, with the substantial or chief facts in relation thereto: if upon examination thereof, the clerk shall be satisfied that sufficient cause is shewn to require bail, he shall issue a *capias* in like manner, and make an order thereon, specifying in what amount the defendant or defendants shall be required to give bail; the officer serving the process shall in like manner take bail. The bail taken as herein directed may be discharged or the amount there-

of reduced by the court to which the writ is returned, on application during the term to which it is returned, upon satisfactory proof.

SEC. 2. Where any writ shall have been issued from any court of record in this state, whereon bail is required, the sheriff or other officer to whom the same may be directed, shall take a bail bond to himself, with sufficient security in a penalty of double the sum for which bail is required. And for the purpose of avoiding errors in the taking thereof, the condition shall be substantially in the following form:

"The condition of this obligation is such, that whereas A. B. has lately sued out of the circuit court of the county of a certain writ of *capias ad respondendum*, in a certain plea of against C. D. returnable to the next term of the said court to be holden at on the day of next. Now if the said C. D. shall be and appear at the said court, to be holden at on the said

day of next; and in case the said E. F. shall

not be received as bail in the said action, shall put in good and sufficient bail, which shall be received by the plaintiff, or shall be adjudged sufficient by the court, or the said E. F. being accepted as bail, shall pay and satisfy the costs and condemnation money, which may be rendered against the said C. D. in the plea aforesaid, or surrender the body of the said C. D. in execution, in case the said C. D. shall not pay and satisfy the said costs and condemnation money, or surrender himself in execution, when by law such surrender is required, then this obligation to be void, otherwise to remain in full force and effect;" which bond so taken, shall be returned with the writ, on or before the first day of the term of the court to which the writ is returnable. In case the sheriff or other officer, executing such process, and to whom it shall be directed, shall neglect to take such bond or the bail be held insufficient, on exception taken and entered of record during the term to which such writ shall be made returnable, the sheriff or other officer having reasonable notice of taking such exception, shall in either case, be deemed and stand as special bail in the action; and the plaintiff may proceed to judgment against such sheriff or other officer, as in other cases against special bail.

SEC. 3. All bail taken according to the directions of this act, shall be deemed and taken as special bail, and may be proceeded against by an action of debt, in the name of the plaintiff in the original action, as in the case of a recognizance of bail, except where the bail shall be adjudged insufficient by the court; then the bond shall in that case

Sheriff's duty when bail is required

Bond to be taken &c.

When to be returned

Liability of sheriff in case of insufficient bail

How bail may be proceeded against

**Exception in favor of sheriff** stand as a security to the sheriff, who may, upon a forfeiture of the condition to appear and perfect bail, proceed thereon in an action of debt or covenant, to recover the amount of whatever damages he may have sustained by reason of the non-performance of such condition; and shall also have the same right to arrest and detain the principal in custody, in case the bail shall be adjudged insufficient by the court, and the principal shall not perfect bail within the time required by law, as the bail might have had; if he shall elect to arrest and commit the principal to prison, then his remedy on the bond shall cease, and the bond be void. The sufficiency of the bail shall be excepted to, during the term to which the writ is returnable, otherwise the same shall be considered as accepted by the plaintiff. Objections to the sufficiency of bail shall be decided by the court in which the exception is taken without delay, on such evidence as may be produced, and as it may deem satisfactory: the burthen of proof shall lie on the party affirming the sufficiency, allowing the bail to be examined on oath or affirmation, touching his sufficiency.

**Exceptions to bail when to be made**

**Upon whom the burthen of proof rests**

**Defendant may surrender himself or his bail may surrender him in vacation**

**What proceedings to be had in**

**Such cases**

SEC. 4. It shall be lawful for the defendant in any action in any court of record when bail shall have been given as aforesaid, to surrender himself, or for his bail to surrender him at any time before the return day of the process, which may have been sued out against him as bail, to the court in which the suit may be pending, during the sitting thereof, or in vacation, to the sheriff of the county in which process was served. In case the surrender shall be made during the sitting of the court, an entry shall be made on the records of the court, stating the surrender and commitment of the defendant to the custody of the sheriff: if the surrender be made in vacation, the bail or principal shall obtain a certified copy of the bail bond from the sheriff or clerk of the court, in whosesoever possession the same may be, and shall deliver himself, or be delivered by his bail to such sheriff, who shall thereupon endorse on such copy of the bail bond, an acknowledgment of the surrender of the body of the defendant to his custody, and thereupon the said copy of the bond with such acknowledgment shall be filed in the office of the clerk of the court in which the action is pending. Upon giving notice of the surrender, whether made in term time or vacation, to the plaintiff or his attorney, and paying the costs of the action against the bail, if any have accrued, the bail shall be discharged from all liability; the defendant shall be committed to the jail of the county, there to remain until discharged by due course of law.—

If the surrender be after judgment, and the plaintiff shall not charge the defendant in execution within fifteen days after notice thereof, he shall be discharged out of custody; the plaintiff may, notwithstanding such discharge, have execution against the real and personal estate of the defendant.

SEC. 5. Any defendant surrendered into custody or committed by his bail, in manner aforesaid, may at any time before final judgment, shall have been rendered in the action, discharge himself from custody by giving other good and sufficient special bail; the sheriff or other officer authorized to take bail, shall take new bail to the same effect as is herein before provided.

SEC. 6. In all cases of bail under this act, it shall and may be lawful for the bail to arrest and secure the body of the principal, until a surrender can be made to the sheriff of the county, where the suit may be pending, or to the court to which the process was returnable.

SEC. 7. Hereafter no suit shall be commenced upon any bail bond or recognizance of bail, in any civil action, until a writ of *capias ad satesfaciendum*, shall have issued against the defendant in the original action, directed to the sheriff of the county in which such defendant was arrested, and such sheriff shall have returned that the said defendant was not found in his county; if any action shall hereafter be commenced upon such bond or recognizance, and it shall not appear upon the trial thereof that a writ of *capias ad satesfaciendum* was issued and returned in the manner herein before mentioned, a verdict shall be found for the defendant. It shall be also necessary to charge the bail, that such writ of *capias ad satesfaciendum* should be issued and delivered, at least ten days before the return day thereof, to the sheriff of the county or officer to whom it may be directed; such sheriff or officer shall endeavor to serve such writ upon the defendant, any directions which he may receive from the plaintiff or his attorney, to the contrary notwithstanding.

SEC. 8. In all cases where judgment shall hereafter be entered up in any court of record in this state, against any person or persons as bail for another, and the amount of such judgment, or any part thereof, has been paid, or discharged by such bail, his, her or their executors, administrators or heirs, it shall and may be lawful for such bail, his, her or their heirs, executors, or administrators, to obtain judgment by motion against the person or persons for whom he, she or they were bound, for the full amount of what shall have been paid by the said bail, his, her or their heirs, executors or administrators, in such court.

where judgment shall have been entered up against such bail, before judgment shall be entered against the principal ten days previous notice of such motion shall have been given to him, if a resident of this state, and if a non resident, then notice of such motion, shall have been published, for four weeks successively, in some newspaper printed in this state.

Death of principal to be plead in bar

SEC. 9. In all actions against bail, it shall be lawful for the bail to plead in bar to such actions, the death of the principal before the return day of the process against the bail; if on the trial of any such issue, the death of the principal be found to have happened before such return day, judgment shall be given in favor of the defendant; he shall notwithstanding be liable to judgment and execution for the costs of suit, unless such death shall be found to have taken place before the commencement of the action.

Arrest of defendant to discharge bail in certain cases

SEC. 10. If any defendant having given special bail in any action, shall afterwards be legally arrested and delivered over to the executive authority of the United States, or of any state or territory thereof, upon a charge of having committed a crime out of the jurisdiction of this state, and shall be thereupon carried beyond the limits thereof, such bail shall be discharged from all liability incurred as bail, if the defendant has not returned to this state discharged from such arrest, before he shall be liable to be charged as bail for such defendant.

A discharge under insolvent law to release bail,

SEC. 11. When any defendant in any civil action, shall have been discharged as an insolvent debtor, agreeably to the laws of this state respecting insolvent debtors, and a certificate from the authority lawfully granting the same, shall be produced to the court, the bail of such defendant shall, in all cases, be entitled to have an *exoneretur* entered upon the records of the court, which shall thereupon operate as a discharge from his bond or recognizance, in the same manner as if he had surrendered his principal in court, or to the sheriff as hereinbefore directed: *Provided*, That judgment shall not have been recovered against him as the bail of such defendant.

Proceedings by scire facias not allowed

SEC. 12. Hereafter proceedings by *scire facias* against bail, in civil cases, shall not be allowed in any court of record in this state. Proceedings already instituted may be proceeded in as though this act had not been passed.

Repealing clause.

SEC. 13. All acts and parts of acts coming within the intent, spirit and meaning of this act, and the objects and proceedings to which it relates, and heretofore in force in this state, are hereby repealed. No proceedings, however had, or rights secured under them, shall be in any way

impeded or impaired, but may be prosecuted and enforced, as if this act had not taken effect. This act shall take effect on the first day of June next.

[Approved, Jan. 26th, 1827.]

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## BILLS OF EXCHANGE.

*AN ACT concerning Bills of Exchange.*

In force first  
June, 1827

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That when any foreign bill of exchange, which may be drawn for any sum of money, expressed that the value has been received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or endorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest, from the time such bill ought to have been paid, until paid, and ten per cent damages in addition, together with the costs and charges of protest.*

SEC. 2. *If any bill of exchange drawn upon any person, or body politic, or corporate, out of this state, but within the United States, or their territories, for the payment of money, and expressed to be for value received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or endorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest from the time such bill ought to have been paid, until paid, and five per cent damages in addition, together with costs and charges of protest.*

SEC. 3. *The act entitled "an act regulating bills of exchange," approved February 14, 1821, shall be and the same is hereby repealed: Provided, That the repeal of said act shall in no way affect or impair any rights or interests acquired under said act. This act to take effect from and after the first day of June next.*

[Approved, Dec. 28, 1826.]

## CHANCERY.

In force first  
June, 1827 *AN ACT to prescribe the mode of proceeding in Chancery.*

**SEC. 1.** *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the several circuit courts in this state, in all causes of which they may have jurisdiction as courts of chancery, shall have power to proceed therein according to the mode hereinafter prescribed, and where no provision is made by this act in cases that may arise, then according to the general usage and practice of courts of equity, or agreeably to such rules as may be established by the said courts in that behalf.*

Mode of com-  
mencing suits  
in chancery

**SEC. 2.** *The mode of commencing suits in equity, shall be by filing a bill setting forth the nature of the complaint with the clerk of the circuit court of the county within whose jurisdiction the defendants, or the major part of them, if inhabitants of this state reside, or if the suit may affect real estate in the county where the same, or greater part thereof shall be situated; if the defendants are all non-residents, then with the clerk of the circuit court of any county; bills for injunctions to stay proceedings at law shall be filed in the office of the clerk of the circuit court of the county in which the record of the proceedings had shall be.*

Summons

**SEC. 3.** *Upon the filing of every bill as aforesaid, the clerk of the court aforesaid, shall thereupon issue a summons directed to the sheriff of the county in which the defendant resides, if the defendant be a resident of this state, requiring him to appear and answer the bill on the return day of the summons, and where there are several defendants residing in different counties, a separate summons shall be issued to each county, including all the defendants residing therein. The said summons shall be tested in the name of the judge of the circuit court out of which it may issue, shall bear date on the day it issues, and be made returnable to the next term of the court after the date thereof, unless the suit be brought within ten days immediately preceding any term, in which case the summons shall be returnable to the next term thereafter.*

How tested, &c.  
served

**SEC. 4.** *Every summons shall be under the signature of the clerk of the court issuing the same, and the service of the summons shall be by delivering a copy thereof to the defendant, or leaving such copy at his usual place of abode, with some white person of his family, of the age of ten years or upwards, and informing such person of the*

contents thereof; which service shall be at least ten days before the return day of such summons.

SEC. 5. If a defendant to any bill in equity, shall not on the third day of the term to which the summons is returnable, enter or cause his appearance to be entered by a solicitor, in cases where a summons for that purpose shall have issued, whether such process be served or not, and it shall be made to appear by affidavit to the satisfaction of the court, that the defendant resides, or hath gone out of the state, or cannot on due enquiry be found, or doth conceal himself therein, the said court may, by order, direct the defendant to appear on the first day of the next succeeding term, and answer the complainant's bill, which order shall within sixty days thereafter, be published in one of the public newspapers printed in this state for four weeks successively, once at least in every week; if the defendant shall not appear by the time so limited, or within some future period to be appointed by the court if necessary; and on proof of the publication of the order aforesaid, the court may by order direct the complainant's bill to be taken for confessed, and make such decree thereon as shall be just, and may issue process to compel its performance, either by sequestration of the real and personal estate and effects of the defendant so absent or concealed, or not found as aforesaid, or such parts thereof as shall be deemed sufficient to satisfy the claim or demand of said complainant, or by causing possession of the estate or effects demanded by the bill to be delivered to the complainant, or may order the complainant's claim or demand to be paid out of the estate and effects so sequestered, according to the true intent and meaning of the decree of the said court, such complainant giving such security, and in such amount as the court may direct, to abide such order as may be made touching the restitution of such estate, and effects, in case the defendant shall afterwards appear and be admitted to defend such suit upon payment of costs, and such other terms as the court may direct. If no such security shall be given, the estate and effects so sequestered shall remain under the direction of the court, to abide such order as shall be just in the premises: If any person residing out of this state as aforesaid, against whom a decree is, or shall be made, his heirs, devisees, executors, administrators or assigns, as the case may require, shall within one year after notice in writing given him or them of such decree, or within three years after such decree, if no such notice shall have been given as aforesaid, appear in open court and petition to be heard touching the matter of such decree, and shall pay such

Publication of notice

Process to compel performance of decrees

Court may impose conditions

**Costs** as the court may deem reasonable in that behalf, the person so petitioning may appear and answer the complainant's bill; and thereupon such proceedings shall be had as if the defendant had appeared in due season and no decree had been made. The decree shall, after three years from the making thereof, if not set aside in manner aforesaid, be deemed and adjudged confirmed against such non-resident defendant, and all persons claiming under him by virtue of any act done subsequent to the commencement of such suit: and at the end of the said three years the court may make such further order in the premises as shall be required and shall be just.

**SEC. 6.** If the defendant shall be brought into court by virtue of any process, being in contempt for refusing to appear, and shall continue to refuse or neglect to enter his appearance, or to appoint a solicitor of the court to do it for him according to the provisions of this act, or the rules of the said court, then and in such case the court may appoint a solicitor to enter an appearance for such defendant, and such further proceedings may be had in the said cause as if the party had actually appeared.

**SEC. 7.** The judges of the said circuit courts may, from time to time in their several circuits establish rules for proceedings in taking a bill for confessed in every case not otherwise provided for by law; and also for the proceedings necessary to entitle either party to a decree or order against the opposite party by default; and in such other cases as may occur where, according to the justice and necessity of the case, the same may be required: Nothing herein contained shall affect proceedings for divorce in case of adultery, but such proceedings shall be prosecuted according to the statutes regulating the same, so far as provision shall have been made.

**SEC. 8.** Every defendant who shall be summoned according to the provisions of this act, shall file his exceptions, plea, demurrer or answer, to the bill at the time to which the process of summons shall be returnable; if he fail so to do, the bill may be taken as confessed, but for good cause shewn, the court may extend the time for excepting or pleading, and the court may thereupon enter an interlocutory decree, which may be made absolute at the next term and carried into effect as other final decrees. If the defendant shall appear at the next term and offer to file his answer to the bill, the court may permit him so to do upon his showing sufficient cause and paying the costs of the preceding terms; in such case the decree shall be vacated, and the cause may be proceeded in as in other cases.

**Appearance  
of deft.**

**Circuit courts  
may establish  
orders**

**Divorce**

**Answer, plea,  
&c.**

**Order pro  
confesso**

**When it may  
be set aside**

SEC. 9. Where a bill is taken for confessed, the court before a final decree is made, may, if deemed requisite, order the complainant to produce documents and witnesses to prove the allegations of his bill, or may examine him on oath or affirmation touching the facts therein alleged; such decree shall be made in either case as the court shall consider equitable and proper.

SEC. 10. Every answer shall be verified by an oath or affirmation taken before and certified by a judge or justice of the peace in this state, or the clerk of the court in which the action is pending, or before a judge or justice of the peace, or other person authorized to administer an oath in the state, territory, kingdom or empire, in which the defendant may be or reside; the official character of such officer, if out of this state, being attested by the seal of some court of record within such state, territory, kingdom or empire.

SEC. 11. When an answer shall be adjudged insufficient, the defendant shall file a further answer within such time as the court shall direct, or on failure thereof the bill shall be taken as confessed; if such further answer shall be likewise adjudged insufficient the defendant shall file a supplemental answer, and pay all costs attendant thereon. If that shall be adjudged insufficient, the defendant may be proceeded against for a contempt, and the like proceedings be had thereon to enforce the order of the court as in other cases of contempt.

SEC. 12. Every defendant shall answer all the interrogatories put to him by the complainant in his bill, unless excepted to, and after filing his answer, may exhibit interrogatories to the complainant, which shall be answered by him specially on oath or affirmation, unless excepted to as improper; and such exceptions allowed, and the complainant's answer shall be evidence in the cause in the same manner as the defendant's answer.

SEC. 13. All exceptions to answers or to interrogatories exhibited by the defendant as aforesaid shall be filed within such time as the court may direct, and be argued at such time as the court may appoint. If the complainant's exceptions be overruled, he shall pay costs to the defendant, and if the defendant's answer be adjudged insufficient, he shall pay costs to the complainant.

SEC. 14. Replications shall be filed within four days after answer, and shall be general, and all parties shall have the same advantage as if they were special; and after replication filed the cause shall be deemed at issue, and stand for hearing at the next term: or in default of filing such replication, the cause may be set for hearing upon bill and answer, in which case the answer shall be taken

Allegations of  
bill to be pro-  
ved

Answer to be  
verified by  
oath

When & how  
further an-  
swer may be  
filed

Proceedings  
in cases the  
answers are  
insufficient

Exceptions to  
bills, answers,  
&c

Replications

as true, and no evidence shall be received unless it be matter of record to which the answer refers. When the complainant shall require a discovery respecting the matters charged in the bill, the disclosure shall not be deemed conclusive, but if a replication be filed may be disproved or contradicted like any other testimony, according to the practice of courts of equity.

**Court may extend time to answer** SEC. 15. The said circuit courts when sitting as courts of equity may extend the time for answering, replying, pleading, demurring or joining in demurrer, and may permit the parties to amend their bills, petitions, pleas, answers and replications, on such terms as the court may deem proper so that neither party be surprised or delayed thereby.

**Trial by jury** SEC. 16. The said circuit courts may in their discretion, direct an issue or issues to be tried by a jury whenever it shall be judged necessary in any cause in equity pending in any of the said courts. In all other cases in equity, the mode of trial shall be the same as has been heretofore practised in courts of chancery.

[Sections from 17 to 25 inclusive are repealed by "An act regulating the mode of taking depositions and to provide for the perpetuating of testimony," approved February 9, 1827.]

**Abatement by death of parties** SEC. 26. If in any suit or action now pending, or which shall hereafter be brought in any court of chancery, there are or shall be two or more complainants or defendants, and one or more of them die, (if the cause of such action or suit survive to the surviving complainant or complainants, or against the surviving defendant or defendants) such suit or action shall not thereby be abated, but such death being suggested and shewn to the satisfaction of the court, such suit or action shall proceed at the suit of the surviving complainant or complainants, and against the surviving defendant or defendants.

SEC. 27. Where there shall be two or more complainants or defendants in any suit or action in chancery as aforesaid, and any of them die, and the cause of action do not survive, but other persons shall become parties in interest, in right, or by the death of such deceased party, such suit or action shall by reason of such death be abated only with respect to such deceased party. The surviving complainant or complainants may proceed against the surviving defendant or defendants without reviving the suit against the representatives of the deceased party, or any other who may become interested by the death of such party; but in such case such representatives or other persons becoming interested by the death of such party, shall not be bound by any order or decree in such cause to which they are not made parties; and they may be made parties in the manner hereinafter provided.

SEC. 28. In all cases where all the complainants or defendants in any suit now pending, or hereafter to be brought in any court of chancery, shall die before final decree, such suit or action shall not thereby be abated, but may be revived in the name of the legal representatives of the deceased or other person becoming interested in the cause of action by the death of such party.

SEC. 29. Where any complainant or complainants in any suit in chancery shall wish to make the representatives of any deceased defendant or others who may become interested by the death of such defendant, parties to such suit, no bill of revivor shall be necessary, but such death being suggested and shewn to the satisfaction of the court, or clerk in vacation, a summons in the nature of a *scire facias* may be issued against all persons residing in this state so to be made parties, such court or clerk may make an order of publication as to all such as are non-residents, or whose names are unknown, in the same manner as in the case of non-resident or unknown original defendants, which summons shall be served and returned, and such order published in the same manner, and with the like effect to all intents and purposes, as is required in like cases of summoning or notifying original defendants. If any person so summoned or notified, shall not within such time after service or publication, as the court shall limit and appoint, appear and put in his answer or signify his disclaimer of the suit and the matters in controversy therein, the complainant or complainants may cause his appearance to be entered, and in such case the answer of the deceased party, if any there be, shall be deemed and taken as, and for the answer of such representatives or other person summoned or notified as aforesaid; if there be no answer, proceedings shall be had in all respects against such person as if he had been originally a defendant: Where such deceased party shall have been complainant in any such suit pending as aforesaid, the lawful representatives of such deceased complainant, or any other person or persons who may have become interested in the cause of action by the death of such complainant, shall, and may upon affidavit thereof by him or them, or by any other competent person, and on motion made in court, be by the rule and order of the court inserted as a complainant or complainants in the said suit, and be permitted to make such amendments in the bill as his, her or their title or interest therein may require; to which amendments the defendants shall be compelled to answer as to the original bill; if such person or persons shall not within such time as the court shall limit and appoint, cause himself, herself, or themselves to be

entered as complainant or complainants in the room of such deceased complainant, then the surviving complainants (if any) shall proceed in such suit against the defendant or defendants: if there be no such surviving complainant and the representatives of the deceased complainant or other persons interested shall not appear as aforesaid, the suit shall be abated.

SEC. 30. Whenever a decree shall be made in any suit in equity, directing the execution of any deed or other writing, and the party against whom the same shall have been entered, shall not comply therewith within the time required, it shall be lawful for the court to appoint a commissioner to execute the same. The execution thereof by such commissioner shall be as valid in law, to pass, release or extinguish the right, title and interest of the party on whose behalf it is executed, as if it had been executed by such party in proper person in conformity with such decree; and such deed or other writing, if it relate to land, shall, within six months after its execution by such commissioner, be recorded in the office of the recorder of the county wherein the land may lie; and if it be not recorded as aforesaid, it shall be void as to subsequent *bona fide* purchasers without notice. In all cases where a sale of property is decreed, the court may direct the same to be made for cash, or on such credit and on such terms, as it may deem best and most equitable to the interests of the several parties.

SEC. 31. All decrees given in causes in equity in this state shall be a lien on real estate and shall have the same force and effect as judgments at law. If no commissioner be appointed to carry such decree into effect, such decree may be carried into effect by execution or other final process, according to the nature of the case, directed to the sheriff or other officer of the proper county; which, when issued, shall be executed and returned by the sheriff or other officer to whom it may be directed, and shall have the same operation and force as similar writs issued upon a judgment at law. The sheriff or other officer to whom the same is directed, shall be subject to the like penalties and recoveries for misconduct or neglect in the execution or return thereof, as in cases at law; or the court may, if necessary, direct an attachment to be issued against the party disobeying such decree, and fine or imprison him or both in the discretion of the court, and may also direct a sequestration for disobedience of any decree.

SEC. 32. In any cause in equity it shall be lawful for the court, in which the cause is pending, to appoint a guardian *ad litem* to any infant or insane defendant in such cause,

commissioner  
may be ap-  
pointed to ex-  
ecute deeds

Decrees to be  
a lien

Upon which  
execution  
may issue

Obedience  
enforced by  
attachment

Guardian ad  
litem

whether such infant or insane defendant shall have been served with process or not, and to compel the person so appointed to act; by such appointment such person shall not be rendered liable to pay any costs of suit; and he shall, moreover be allowed a reasonable sum for his charges as such guardian, to be paid by the party at whose motion he was appointed, to be taxed in the bill of costs.

SEC. 33. All acts and parts of acts coming within the intent, spirit and meaning of this act, and the objects and proceedings to which it relates and heretofore in force in Laws repealed this state, are hereby repealed. No proceedings, however, had, or rights secured under them, shall be in any way impeded or impaired, but may be prosecuted and enforced as if this act had not taken effect.

This act to take effect on the first day of June next.

[Approved, Jan. 26, 1827.]

## CONVEYANCES.

### *AN ACT concerning Conveyances of Real Property.*

In force July 1, 1827

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That livery of seizin shall in no case be necessary for the conveyance of real property; but every deed, mortgage or other conveyance in writing, signed and sealed by the party making the same, the maker or makers being of full age, sound mind, discovert, at large and not in duress shall be sufficient, without livery of seizin, for the giving, granting, selling, mortgaging, leasing or otherwise conveying or transferring any lands, tenements, or hereditaments in this state; so as to all intents and purposes, absolutely and fully to vest in every donee, grantee, bargainee, mortgagee, lessee or purchaser, all such estate or estates, as shall be specified in any such deed, mortgage, lease or other conveyance: Nothing herein contained shall be so construed as to divest or defeat the older or better estate or right of any person or persons, not a party to any such deed, mortgage, lease, or other conveyance.

SEC. 2. Every estate, feoffment, gift, grant, deed, mortgage, lease, release or confirmation of lands, tenements, rents, services or hereditaments made or had, or hereafter to be made or had, by any person or persons being of full age, sound mind, discovert, at large and not in duress to any person or persons; and all recoveries, judgments and executions had or made, or to be had or made, shall be good and effectual to him, her, or them to whom it is, or

Effect of conveyances

Livery of seizin unnecessary

shall be so made, had or given, and to all others, to his, her or their use, against the judgment debtor, seller, feoffor, donor, grantor, mortgagor, lessor, releasor or confirmor, and against his, her, or their heirs, or heirs claiming the same, only as heir or heirs, and every of them; and against all others having or claiming any title or interest in the same, only to the use of the same judgment debtor, seller, feoffor, donor, grantor, mortgagor, lessor, releasor or confirmor, or his, her or their said heirs, at the time of the judgment, execution, bargain, sale, mortgage, covenant, lease, release, gift, or grant made.

*Operation of  
conveyance to  
use, &c.*

SEC. 3. Where any person or persons, stand or be seized, or at any time hereafter shall stand or be seized, of and in any messuages, lands, tenements, rents, services, reversions, remainders or other hereditaments, to the use, confidence or trust of any other person, or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will or otherwise, by any manner of means whatsoever; in every such case, all and every such person or persons, and bodies politic, that have, or hereafter shall have any such use, confidence or trust in fee simple, for term of life or for years, or otherwise, or any use, confidence or trust in remainder or reversion, shall from thenceforth stand and be seized, deemed and adjudged, in lawful seizin, estate and possession of, and in the same messuages, lands, tenements, rents, services, reversions, remainders, and hereditaments, with their appurtenances, to all intents, constructions and purposes, in law of, and in such like estates, as they had or shall have in use, confidence or trust of, or in the same; and that the estate, right, title and possession, that was or shall be in such person or persons that were, or hereafter shall be seized of any lands, tenements or hereditaments, to the use, confidence or trust of any such person or persons, or of any body politic, be from henceforth clearly deemed and adjudged to be in him, her or them, that have or hereafter shall have such use, confidence or trust, after such quality, manner, form and condition, as they had before in, or to the use, confidence or trust that was or shall be in them.

*Conveyances  
valid, notwithstanding  
adverse possession*

SEC. 4. Any person claiming right or title to lands, tenements, or hereditaments, although he, she or they may be out of possession, and notwithstanding there may be an adverse possession thereof, may sell, convey and transfer his or her interest in and to the same, in as full and complete a manner as if he or she were in the actual possession of the lands and premises intended to be conveyed; and the grantee or grantees shall have the same right of

action for the recovery thereof; and shall in all respects derive the same benefit and advantage therefrom, as if the grantor or grantors had been in the actual possession at the time of executing the conveyance.

SEC. 5. No estate in joint-tenancy, in any lands, tenements or hereditaments, shall be held or claimed under any grant, devise or conveyance, whatsoever, heretofore or hereafter made, other than to executors and trustees, unless the premises therein mentioned, shall expressly be thereby declared to pass, not in tenancy in common, but in joint tenancy; and every such estate, other than to executors or trustees, (unless otherwise expressly declared as aforesaid) shall be deemed to be in tenancy in common.

SEC. 6. In cases where by the common law, any person or persons might hereafter become seized in fee tail of any lands, tenements or hereditaments, by virtue of any devise, gift, grant or other conveyance, hereafter to be made, or by any other means whatsoever, such person or persons, instead of being or becoming seized thereof in fee tail, shall be deemed and adjudged to be, and become seized thereof, for his or her natural life only, and the remainder shall pass in fee simple absolute, to the person or persons to whom the estate tail would, on the death of the first grantee, devisee, or donee in tail, first pass, according to the course of the common law, by virtue of such devise, gift, grant, or conveyance.

SEC. 7. If any person shall sell and convey to another, by deed or conveyance, purporting to convey an estate in fee simple absolute, in any tract of land or real estate, lying and being in this state, not then being possessed of the legal estate or interest therein at the time of the sale and conveyance, but after such sale and conveyance, the vendor shall become possessed of, and confirmed in the legal estate, to the land or real estate so sold and conveyed, it shall be taken and held to be in trust, and for the use of the grantee or vendee; and the conveyance aforesaid, shall be held and taken, and shall be as valid as if the grantor or vendor had the legal estate or interest, at the time of said sale or conveyance.

SEC. 8. Every deed conveying real estate, which by any other instrument in writing, shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage; but the person or persons for whose benefit any such defeasance, or other writing, intended to operate as a defeasance is made, shall not have the benefit thereof, unless the defeasance or other writing intended to operate as such, shall be recorded in the office

Who may be joint tenants, and how created

Entails not allowed

Title perfected after conveyance, inures to grantee

Deeds of defeasance to be recorded in thirty days

in which the absolute deed is required to be recorded, within thirty days after such absolute deed is recorded.

**All deeds or other writings concerning land to be acknowledged or proved, before recorded**

SEC. 9. Every deed, grant, bargain, conveyance, mortgage, defeasance, bond, covenant or other writing of, and concerning any lands, tenements, hereditaments or real estate, within this state, whereby the same may be affected in law or equity (may, in order to entitle any of the before enumerated writings to be recorded,) be acknowledged by the party or parties executing the same in proper person, or by his, her or their lawful attorney, authorized by power in writing for that purpose specially, or proved by one or more of the subscribing witnesses thereto, before one of the judges of the supreme or circuit court of this state, or before one of the clerks of the circuit court, and certified by such clerk, under the seal of the said court, or before one of the justices of the peace of the county where the land intended to be affected or conveyed shall lie; but where the party or parties executing such writing live or be out of this state, the same may be acknowledged before one of the judges of the supreme or district court of the United States, or of the superior courts in any of the United States or Territories, or before any clerk of any court of record, in any of the United States or their Territories, and certified by such clerk under the seal of the court.

**How non-residents may convey land in this state**

**And how authenticated**

SEC. 10. All acknowledgments and proofs of any deeds, conveyances or writings made as aforesaid, by persons, being or residing out of the United States, at the time of the execution thereof, for the conveyance of any lands in this state, taken or made before the mayor or chief officer of any city in the kingdom or government, where the party or parties executing the same may reside or be, and duly certified under the seal of office of the said mayor or principal officer, shall be of like force and validity, and entitle the same to be recorded, as if the same were acknowledged in the manner prescribed in the preceding section of this act.

**Duty of the judge or other officer taking the acknowledgment or proof of deeds**

SEC. 11. No judge or other officer shall take the acknowledgment of any person to any deed or instrument of writing as aforesaid, unless the person offering to make such acknowledgment, shall be personally known to him to be the real person who, and in whose name such acknowledgment is proposed to be made, or shall be proved to be such, by a credible witness, and the judge or officer taking such acknowledgment, shall in his certificate thereof state, that such person was personally known to him to be the person whose name is subscribed to such deed or writing, as having executed the same, or that he was proved to be such by a credible witness, (naming him;) and on ta-

king proof of any deed or instrument of writing by the testimony of any subscribing witnesses, the judge or officer shall ascertain, that the person who offers to prove the same, is a subscribing witness, either from his own knowledge or from the testimony of a credible witness; and if it shall appear from the testimony of such subscribing witness that the person whose name appears subscribed to such deed or writing, is the real person who executed the same, and that the witness subscribed his name as such, in his presence and at his request, the judge or officer shall grant a certificate, stating that the person testifying as subscribing witness, was personally known to him to be the person whose name appears subscribed to such deed as a witness of the execution thereof, or that he was proved to be such by a credible witness, (naming him) and stating the proof made by him; and where any grantor or person executing such deed or writing, and the subscribing witnesses are deceased, or cannot be had, the judge or officer, as aforesaid, may take proof of the hand writing of such deceased party, and subscribing witness or witnesses (if any) and the examination of a competent and credible witness, who shall state on oath or affirmation, that he personally knew the person, whose hand writing he is called to prove, and well knew his signature; (stating his means of knowledge,) and that he believes the name of such person subscribed to such deed or writing, as party or witness, (as the case may be,) was thereto subscribed by such person; and when the hand writing of the grantor or person executing such deed or writing, and of one subscribing witness, (if any there be) shall have been proved as aforesaid, the judge or officer shall grant a certificate thereof, stating the proof aforesaid.

SEC. 12. It shall and may be lawful for any married woman to release her right of dower, of, in and to any lands and tenements, whereof her husband may be possessed or seized, by any legal or equitable title during coverture, by joining such husband in the deed or conveyance, for the conveying of such lands and tenements, and appearing and acknowledging the same before any judge or other officer authorized to take acknowledgments by this act; and it shall be the duty of such judge or other officer, if such woman be not personally known to him, to be the person who subscribed such deed or conveyance, to ascertain the same by the testimony, of at least, one competent and credible witness; and upon being satisfied of that fact, shall acquaint such woman with the contents of the deed or conveyance, and shall examine her separate and apart from her husband, whether she executed the same, and re-

Relinquish-  
ment of dow-  
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Identity of  
person how  
ascertained

## Certificate

linquished her dower to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband; and if she acknowledge that she executed the same, and relinquishes her dower, in the lands and tenements therein mentioned voluntarily and freely and without the compulsion of her husband, such judge or other officer, shall grant a certificate, to be endorsed on, or annexed to, such deed, stating that such woman was personally known to him, or was proved by a witness, (naming him,) to be the person who subscribed such deed or writing; and that she was made acquainted with the contents thereof, and was examined, and acknowledged such deed as aforesaid; which, being recorded, together with the deed, duly executed and acknowledged by the husband according to law, shall be sufficient to discharge and bar the claim of such woman to dower, in the lands and tenements conveyed by such deed or conveyance.

## Effect of

SEC. 13. When any husband and wife, residing in this state, shall wish to convey the real estate of the wife, it shall and may be lawful for the said husband and wife, she being above the age of eighteen years, to execute any grant, bargain, sale, lease, release, feoffment, deed, conveyance or assurance, in law whatsoever, for the conveying of such lands, tenements and hereditaments; and if after the executing thereof, such wife shall appear before some judge or other officer, authorized by this act to take acknowledgments, to whom she is known, or proved by a credible witness to be the person who executed such deed or conveyance, such judge or other officer, shall make her acquainted with, and explain to her the contents of such deed or conveyance, and examine her separate and apart from her husband, whether she executed the same voluntarily, freely, and without compulsion of her said husband; and if such woman shall, upon such examination, acknowledge such deed or conveyance to be her act and deed, that she executed the same voluntarily and freely, and without compulsion of her husband, and does not wish to retract, the said judge or other officer, shall make a certificate endorsed on, or annexed to such deed or conveyance, stating that such woman was personally known to the said judge or other officer, or proved by a witness, (naming him,) to be the person who subscribed such deed or conveyance, and setting forth that the contents were made known and explained to her, and the examination and acknowledgment aforesaid; and such deed (being acknowledged or proved according to law as to the husband,) shall be as effectual in law as if executed by such woman while sole and unmarried. No covenant or warranty con-

## Husband and wife may convey real estate of the wife

## Acknowledgments

tained in any such deed or conveyance, shall in any manner bind or affect such married woman, or her heirs, further than to convey from her and her heirs effectually, her right and interest expressed to be granted or conveyed in such deed or conveyance.

SEC. 14. Where any *feme covert*, not residing in this state, being above the age of eighteen years, shall join with her husband, in any deed, mortgage, conveyance, or other writing of, or relating to any lands or real estate, situated within this state, she shall thereby be barred of, and from all claim of dower, and all other interest, claim, seizin, right and title therein, in like manner as if she were sole and of full age; and the acknowledgment or proof of such deed, mortgage, conveyance or other writing, may be the same, as if she were sole, and shall entitle such deed, mortgage, conveyance or other writing, to be recorded, as is authorized by this act.

SEC. 15. All grants, bargains, sales, leases, releases, mortgages, defeasances, conveyances, bonds, contracts, and agreements, of and concerning any lands, tenements, or hereditaments, or whereby the same may be affected in law or equity, whether executed within or without this state, shall be recorded in the recorder's office in the county where such lands, tenements, or hereditaments are lying and being, within twelve months after the execution of any such writings; and every such writing, that shall at any time after the publication hereof, remain more than twelve months after the making of such writing, and shall not be proved and recorded as aforesaid, shall be adjudged fraudulent and void against any subsequent *bona fide* purchaser or mortgagee, for valuable consideration, unless such deed, conveyance or other writing, be recorded as aforesaid, before the proving and recording of the deed, mortgage or writing, under which, any such subsequent purchaser or mortgagee shall claim.

SEC. 16. All powers or letters of attorney, or agency, authorizing the granting, selling, conveying, assuring, leasing or transferring, or for the executing or acknowledging of any grants, sales, leases, assurances or other conveyances, or writings whatsoever, concerning any lands and tenements, or whereby the same may be affected in law or equity, shall be acknowledged or proved, and recorded as herein before required in cases of deeds and other assurances, after which all grants, conveyances and assurances, made and acknowledged, pursuant to the powers granted, unless the same be revoked by a deed duly acknowledged and proven, and recorded as aforesaid, shall

To operate  
only as a quit  
claim as to the  
wife

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residing out of  
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to convey

Deeds to be  
recorded,  
(See state re-  
corder) as to  
lands of non-  
residents

To be ac-  
knowledged  
or proved

be as valid and effectual as if executed and acknowledged by the constituent or constituents.

Deeds whether recorded or not may be read in evidence

SEC. 17. Every deed, conveyance, or other writing, of, or concerning any lands, tenements or hereditaments, which by virtue of this act, shall be required or entitled to be recorded as aforesaid, being acknowledged or proved according to the provisions of this act, whether the same be recorded or not, may be read in evidence without any further proof of the execution thereof, and if it shall appear to the satisfaction of the court, that the original deed so acknowledged or proved, and recorded, is lost, or not in the power of the party wishing to use it, a transcript of the record thereof, certified by the recorder in whose office the same may be recorded, may be read in evidence, in any court of this state, without proof thereof.

When the original is lost a copy from the record may be read in evidence

Acts repealed

SEC. 18. All acts and parts of acts coming within the purview of this act, are hereby repealed.

This act to take effect from the first day of July next.

[Approved, Jan. 31, 1827.]

## COSTS.

In force June 1st, 1827

### *AN ACT concerning Costs.*

Non residents to give security for costs

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all actions on office bonds for the use of any person; actions on the bonds of executors, administrators or guardians; *qui tam* actions; actions on any penal statute; and in all cases in law or equity, where the plaintiff or person for whose use an action is to be commenced, shall not be a resident of this state, the plaintiff or person for whose use the action is to be commenced, shall, before he institute such suit, file, or cause to be filed with the clerk of the circuit or supreme court in which the action is to be commenced, an instrument in writing, of some responsible person, being a resident of this state, to be approved by the clerk, whereby such person shall acknowledge himself bound to pay, or cause to be paid, all costs which may accrue in such action, either to the opposite party, or to any of the officers of such courts; which instrument in writing may be in the form, and to the purport following, to wit:

A. B.

vs.

C. D.

{

— COURT,

I do hereby enter myself security for costs in this cause, <sup>Bond</sup> and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action either to the opposite party or to any of the officers of this court, in pursuance of the laws of this state. Dated this      day of

E. F.

If any such action shall be commenced without filing such instrument of writing, the court, on motion, shall dismiss the same, and the attorney of the plaintiff shall pay all costs accruing thereon; and if at any time after the commencement of any suit by a resident of this state, he shall become non-resident; or, if in any case the court shall be satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court, with respect to their legal demands, it shall be the duty of the court, on motion of the defendant or any officer of the court, to rule the plaintiff on or before a day, in such rule named, to give security for the payment of costs in such suit: if such plaintiff shall neglect or refuse, on or before the day in such rule named, to file an instrument of writing of some responsible person, being a resident of this state, whereby he shall bind himself to pay all costs which have accrued, or may accrue in such action, the court shall, on motion, dismiss the suit.

SEC. 2. If any court shall, before, or after the commencement of any suit, be satisfied that the plaintiff is a poor person, and unable to prosecute his or her suit, and pay the costs and expenses thereof, they may in their discretion, permit him or her to commence and prosecute his or her action, as a poor person; and thereupon such person shall have all the necessary writs, process and proceedings, as in other cases without fees or charge.— The court may assign to such person counsel, who, as well as all other officers of the court, shall perform their duties in such suit without any fees, charge or reward: if judgment be entered for the plaintiff there shall be judgment for his costs; which costs shall be collected for the use of the said officers.

SEC. 3. If any person shall sue in any court of this state, any action, real, personal or mixed, or upon any statute for any offence or wrong immediately personal to the plaintiff, and shall recover any debt or damage in such action, then the plaintiff or defendant shall have judgment to recover costs against the defendant, to be taxed; and the same shall be recovered together with the debt.

Suits may be dismissed

The attorney shall pay costs

Residents required in certain cases to give security for costs

Poor persons may prosecute without paying costs

Counsel to be assigned them

Plaintiff's costs to be taxed &amp; recovered by execution

Exception

or damages by execution, except in the cases hereinafter mentioned.

When defendant shall recover costs

SEC. 4. If any person shall sue in any court of record of this state, any action, wherein the plaintiff or demandant might have costs in case judgment be given for him, and he be *non-pros'd*, or suffer a discontinuance, or be *non-suited* after appearance of the defendant, or a verdict pass against him; then the defendant shall have judgment to recover his costs against the plaintiff, (except against executors or administrators prosecuting in the right of their testator or intestate) or demandant to be taxed, and the same shall be recovered of the plaintiff or demandant, by like process as the plaintiff or demandant might have had against the defendant, in case judgment had been given for such plaintiff or demandant.

Defendant's costs

SEC. 5. Any person making avowry, justification or cognizance in replevin, if the same be found for him, or the plaintiff be *non-suited* or *non-pros'd*, suffer a discontinuance, or be otherwise barred, then such person shall recover his damages and costs against the plaintiff, in like manner as the plaintiff would have done, if the same had been found against the defendant.

Upon demur-  
rer

SEC. 6. If, in any action, judgment upon any demurrer, by either party to the action, shall be given against the plaintiff or demandant, the defendant shall recover costs against the plaintiff or demandant. If such judgment be given for the plaintiff or demandant, he shall recover costs against the defendant; and the person so recovering costs, shall have execution for the same.

Costs to be given at the discretion of the court in certain cases

SEC. 7. Where any defendant in any action, or plaintiff in replevin, shall plead several matters, and any of such matters, upon demurrer joined, shall be adjudged insufficient, or if a verdict shall be found, in any issue of the cause, for the plaintiff or demandant, costs shall be given at the discretion of the court.

Where there are several counts

SEC. 8. Where there are several counts in any declaration, and any one of them be adjudged insufficient, or a verdict on any issue joined thereon, shall be found for the defendant, costs shall be awarded in the discretion of the court.

Where several debts in tort some acquit-  
ted

SEC. 9. Where several persons are made defendants to any action of trespass, assault, false imprisonment, detinue, replevin, trover or ejectment, and any one or more of them shall, upon the trial, be acquitted by verdict, every person so acquitted shall recover his costs of suit, in like manner as if such verdict of acquittal had been given in favour of all the defendants.

SEC. 10. In all suits upon any writ of *scire facias*, or <sup>On scire facias & prohibition</sup> upon prohibition, the plaintiff obtaining judgment, or an award of execution, after plea pleaded, or demurrer joined therein, shall recover his costs of suit; if the plaintiff shall be *non-suited*, *non pros'd*, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs.

SEC. 11. In no case in the circuit court shall the fees of <sup>Costs for four witnesses only allowed</sup> more than four witnesses be taxed against the party against whom judgment shall be given for costs, unless the court shall certify on their minutes, that more than four witnesses were really necessary, in which case the clerk, shall tax the costs of as many witnesses, as the court shall so certify.

SEC. 12. In all cases, where any action shall be dismissed for irregularity, or be *non-pros'd* or *non-suited* by reason that the plaintiff neglects to prosecute the same, the defendant shall have judgment for his costs, to be taxed, and have execution thereof. <sup>Costs in cases of non suits</sup>

SEC. 13. In all suits and actions commenced, or to be commenced for, and on behalf of the people of this state, or the governor thereof, or on behalf of the president and directors of the state bank, or for, or on behalf of any county of this state, or in the name of any person for the use of the people of this state, or any county, then and in every such case, if the plaintiff or plaintiffs shall recover any debt or damages in such action or suit, the plaintiff or plaintiffs shall recover costs as any other person in like cases: But if such plaintiff or plaintiffs suffer a discontinuance, or be *non-suited* or *non-pros'd*, or verdict pass against such plaintiff or plaintiffs, the defendant shall not recover any costs whatever. Nothing in this section contained shall extend to any popular action, nor to any action to be prosecuted by any person in behalf of himself and the people or a county, upon any penal statute.

SEC. 14. Upon the complainant dismissing his bill in equity, or the defendant dismissing the same for want of prosecution, the defendant shall recover against the complainant full costs; and in all other cases in chancery, not otherwise directed by law, it shall be in the discretion of the court to award costs or not; and the payment of costs, when awarded, may be compelled by execution. <sup>Costs when recovered in equity</sup>

SEC. 15. When any suit shall be commenced in the name of one person, to the use of another, the person to whose use the action is brought shall be held liable and bound for the payment of all costs which the plaintiff may be adjudged or bound to pay, to be recovered by action on the case. <sup>Cestuy que use bound for costs</sup>

On appeal or  
certiorari

SEC. 16. In all cases of appeal or *certiorari* upon the judgments of justices of the peace, when the judgment of the justice of the peace shall be wholly affirmed or reversed, the party succeeding shall recover from the opposite party his costs, not only in the circuit court but before the justice of the peace, and shall have his execution therefor: not more than fifteen dollars shall be taxed for costs in the circuit court, against the losing party in any such case; whatever costs shall have been made by the party succeeding in such appeal or *certiorari* over and above the said sum of fifteen dollars shall be paid by himself: where the judgment of the justice of the peace shall be affirmed in part, then the court shall divide the costs between the parties, according to the justice of the case.

Appeal from  
judge of pro-  
bate, &c.

SEC. 17. In all cases of appeal from the decision of a judge of probate, the costs shall be in the discretion of the circuit court.

On appeals or  
writs of error  
to supreme  
court

SEC. 18. If any person shall sue out a writ of error, or take an appeal to the supreme court, to review the judgment of the circuit court, and the same judgment be affirmed, or the writ of error be discontinued or quashed, or the plaintiff in error or appellant be non-suited, the defendant in error or appellee shall recover his costs, and have execution therefor; and if the judgment be reversed, the appellant or plaintiff in error shall recover his costs, and shall have execution therefor, as in other cases.

Per centum  
&c. may be a-  
warded

SEC. 19. In every such case, if the judgment or decree be affirmed in the whole, the party prosecuting such writ of error or appeal, shall pay to the opposite party a sum not exceeding ten per centum on the amount of the judgment or decree so attempted to be reversed at the discretion of the court, and in addition to the costs, shall have judgment and execution thereof: *Provided*, The supreme court shall be of opinion that such appeal or writ of error, was prosecuted for delay.

Costs may be  
apportioned

SEC. 20. Where such judgment or decree shall be reversed in part, and affirmed in part, the costs shall be apportioned between the parties, according to the discretion of the supreme court.

Duty of clerks

SEC. 21. The clerk of any court in this state, is hereby authorized and required to tax and subscribe all bills of costs arising in any cause or proceeding, instituted in the court of which he is clerk, agreeably to the fees which shall, for the time being, be allowed or specified by law; and shall in no case allow any item or charge, unless he shall be satisfied that the service for which it was made, was actually performed in the cause.

SEC. 22. If any person shall feel himself aggrieved by

the taxation of any bill of costs by the clerk, he may apply to the court in which the action or proceeding was had, to retax the same according to law: If the said court shall find any charge allowed for services not performed, or for which the person charged is not liable, or any item charged higher than by law is allowed, then the court shall correct such taxation, and if the party aggrieved shall have paid such unlawful charge, the clerk shall forfeit all fees allowed to him for taxation, and shall pay to the party aggrieved the whole amount which he may have paid, by reason of the allowing of such unlawful charge.

SEC. 23. In all cases where either party shall be adjudged to pay costs before final judgment, by reason of setting aside *non-suit*, default, or *non-poss*, or the granting of a continuance or new trial, or otherwise; and in all cases where there is security for costs, or attorney liable for costs, or an action brought to the use of another, and the plaintiff shall be adjudged to pay the costs, either before or upon final judgment, it shall be lawful for the clerk to make out and tax a bill of costs so adjudged to be paid, against the party adjudged to pay the same, and against his security for costs, or other person liable for the payment thereof, or either of them, and certify the same under the seal of the court, which being delivered to the sheriff of the proper county, he shall demand payment from the person therein charged; if payment shall not be made accordingly, within thirty days after such demand, the sheriff shall levy the same on the goods and chattels, lands and tenements, of the persons so chargeable, and proceed therein in all things as on a writ of *fieri facias*.

SEC. 24. All acts and parts of acts coming within the purview of this act are hereby repealed: But all costs, actions and rights which have accrued under any law, repealed by this act, are saved from the operation of the foregoing repealing clause.

This act to be in force on the first day of June next.

[Approved, Jan. 1<sup>st</sup>, 1827.]

## COUNTIES.

### AN ACT to incorporate Counties.

In force July 1, 1827

SEC. 1. Be it enacted by the People of the State of Illinois represented in the General Assembly, That each county which now exists, or which may hereafter be established in this state, shall be a body corporate and politic. All

All counties incorporated

Remedy for persons aggrieved

Liability of clerks

Fee bills may go out in certain cases before final judgment

**Suits bro't by  
counties to be  
in their name**

suits hereafter to be brought by or against any of the counties in this state, shall be brought in the name of, or against "the county of \_\_\_\_\_;" and by that name they may sue and be sued, plead and be impleaded, defend and be defended, in any court of record, or other place where justice shall be administered. It shall be the duty of the county commissioners' court of each of the counties of this state to take and order suitable and proper measures for the prosecuting and defending of all suits to be brought by or against their respective counties.

**Deeds, &c to  
counties when  
valid**

SEC. 2. All deeds, grants and conveyances heretofore made, or which shall be hereafter made, and duly acknowledged and recorded, as other deeds conveying any lands, tenements or hereditaments, to any county or the inhabitants of any county and their successors, or to the county commissioners, or to the county commissioners' court, or to the governor, or any other person or persons by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to all intents and purposes, to vest in such county in fee simple or otherwise, all such right, title, interest and estate as the grantor or grantors in any such deed or conveyance had at the time of the execution thereof, in the lands conveyed, and was intended thereby to be conveyed.

**Power of  
commission-  
ers' court o-  
ver county  
property**

SEC. 3. The county commissioners' court may by their order to be entered on their minutes, appoint a commissioner to sell and dispose of any real estate of their county, and the deed of such commissioner, under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient to all intents and purposes to convey to the purchaser or purchasers, all the right, title, interest and estate, whatever which the county may then have in and to the premises, so to be conveyed.

**Capacity of to  
contract**

SEC. 4. All notes, bonds, bills, contracts, covenants, agreements or writings made, or to be made, whereby any person or persons is, are or shall be bound to any county or the inhabitants thereof, or the county commissioners, or county commissioners' court, or to the governor, or any other person or persons, in whatever form for the payment of money, or any debt or duty, or the performance of any matter or thing to the use of any county shall be as valid and effectual to all intents and purposes, to vest in the said county all the rights, interest and actions, which would be vested in any individual, if any such contract had been made directly to him: Suits may be commenced, sued and prosecuted thereon in the name of said county as is provided in the first section of this act; or in the name of the person to whom they are made to the use of the county, as

fully and effectually, to all intents and purposes, as any person may or can upon like notes, bills, bonds, contracts, agreements or writings made to him.

SEC. 5. The county commissioners' court may appoint an agent or agents, to make any contract on behalf of such county for erecting any county building, or for any other purpose authorized by law. The contracts of such agent or agents duly executed for and on behalf of such county, shall be valid and effectual to bind such county to all intents and purposes.

SEC. 6. All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment and execution in the circuit court of the county against which the action is brought. Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment, in the county in which the defendant in such action resides.— When any action shall be commenced against any county, a copy of the summons shall be left with the clerk of the commissioners' court, either during the sitting of said court, or so as a term of said court shall intervene between the day of leaving a copy of such summons and the return day thereof. There shall always be ten days between the service and return of every such summons. In all actions brought by or against any county, the inhabitants of the county so suing, or being sued, may be jurors or witnesses, if otherwise competent or qualified according to law.

SEC. 7. When any judgment shall be rendered against any county, it shall be the duty of the county commissioners' court to order a warrant to be drawn on their treasurer for the amount of the judgment and costs; which warrant shall be paid as other county debts. Nothing herein contained shall authorize any execution to be issued against lands or other property of any county of this state.

SEC. 8. All acts and parts of acts coming within the purview of this act; are hereby repealed. This act to take effect from and after the first day of July next: *Provided*, That this act shall not affect any contract or right which may have accrued to, or against any county before the passage of this act; and all actions and suits shall be conducted in the same manner, to final judgment, on the said rights and contracts as if this act had not been passed.

[Approved, Jan. 3, 1827.]

Court may appoint agents

Actions a-  
gainst counties  
& in favor

where pre-  
sented

In actions a-  
gainst counties  
their clerk to  
be served with  
the summons

Ten days no-  
tice

When county  
is debt inhabi-  
tants may be  
jurors

Duty of com-  
missioners af-  
ter judgment

Acts repealed

## COUNTIES.

## AN ACT

In force June  
1. 1827

Four weeks  
notice to be  
given

No county to  
be divided un-  
less on peti-  
tion of majori-  
ty of voters

*Requiring persons who petition the General Assembly to give certain notices before such petitions are finally acted upon.*

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That no petition or petitions shall, after the end of the present session of the general assembly, be finally acted upon, which prays for a change of county lines, the erection of new counties, the removal of the seat of justice of any county, or which may affect the rights and interests of any person or persons, unless the petitioner or petitioners shall have given four weeks' notice in some newspaper printed in this state; and a copy of said advertisement shall be put up on the court house door in said county, at least two months before such petition or petitions shall be presented to the general assembly.*

SEC. 2. The act entitled "An act relative to the formation and division of new counties" is hereby repealed.

SEC. 3. That no county shall hereafter be divided, or county seat removed, unless it be done on a petition, signed by a majority of the qualified voters of said county, so to be divided, or the county seat removed; which petition shall particularly describe the line or lines of division or curtailment so proposed, and the particular place to which such county seat is proposed to be removed.

This act to be in force from and after the first day of June next.

[Approved, Dec. 26, 1826.]

In force Janu-  
ary 29, 1827.

Boundaries

## PERRY COUNTY.

## AN ACT creating Perry County.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all that tract of country within the following boundaries, to-wit: Beginning at the north east corner of township numbered four, south of range numbered one west; thence due west, on the line between townships three and four, twenty-four miles to the north west corner of township four south, of range four west; thence due south, on the line between ranges four and five, eighteen miles, to the south west corner of township six south, of range four west; thence due east on the line between townships six and seven, twenty-*

four miles, to the south east corner of township six south, of range one west; thence due north on the third principal meridian line, eighteen miles to the place of beginning, shall constitute a new county, to be called the county of Perry.

SEC. 2. That for the purpose of locating the permanent seat of justice for said county, the following named persons shall be, and they are hereby appointed commissioners, to-wit: Edward Humphreys and Samuel Crawford, of Randolph county, and Singleton H. Kimmel, of Jackson county, whose duty it shall be to meet at the house of Amos Anderson, in said county, on or before first Monday of April next, and after being duly sworn before some judge or justice of the peace of this state, faithfully and impartially to discharge the duties imposed upon them by this act, shall proceed to determine upon a place upon which to locate the permanent seat of justice, for said county: *Provided*, The proprietor or proprietors of the land so selected, will give to the county, for the purpose of enabling it to erect the necessary public buildings, a quantity of land not less than twenty acres; which said land shall be conveyed to the county commissioners of said county and their successors in office, for the use of the people of said county, by a good and sufficient deed in fee simple, in the customary form, and with the usual covenant of warranty; and shall afterwards be laid out into lots, and sold under the direction of the county commissioners of said county, at such times and upon such terms as the said commissioners may appoint, for the purpose of enabling said county to erect the necessary public buildings as aforesaid. Should the proprietor or proprietors, refuse to make a donation, as aforesaid, then, and in that case, it shall be the duty of the commissioners to fix upon some other place for the seat of justice, which place, when so fixed and determined upon, shall be considered the permanent seat of justice for said county; and the county seat when so established, shall be called *Pinekney-ville*. And the said commissioners shall certify their proceedings, under their proper hands and seals, to the first county commissioners court, to be held in and for said county; which court shall cause an entry thereof to be spread at large on their books of record.

SEC. 3. Until public buildings shall be erected for the purpose and designated by the county commissioners court, as such, the several courts of record, with the exception of the probate court, shall be held at the house of Amos Anderson in said county.

SEC. 4. An election shall be held at the house of the

Commissioners to locate  
the seat of  
justice.

Their duty

Donation to  
be made

County com-  
missioner's  
duty

Name of town

**Election to be held** above named Amos Anderson, on the first Monday of May next, for three county commissioners, one sheriff, and one coroner, for said county, who shall hold their offices until the next general election, and until their successors be qualified; which said election, shall in all respects be conducted agreeably to the provisions of the act or acts now in force, or which may hereafter be enacted regulating elections: *Provided*, That the qualified voters of said county, when met, shall proceed to elect, from among their number which may then be present, three qualified electors, to act as judges of said election, who shall appoint two qualified voters to act as clerks.

**Clerk's duty**

SEC. 5. It shall be duty of the clerk of the circuit court, who may be appointed for said county, to give public notice of the time and place of holding said election, by causing advertisements to be set up at three of the most public places in said county, at least fifteen days previous to the day on which it is hereby directed to be held: and in case there shall be no clerk appointed in time, it shall be the duty of the recorder to give notice as aforesaid, of the time, and place of said election.

**The rights of the citizens**

SEC. 6. The citizens of the said county of Perry shall be and they are hereby declared to be entitled to the same rights and privileges, as are or may be allowed in general to the other counties in this state.

**With what counties to vote**

SEC. 7. That until the next general apportionment of the representation of the several counties of this state, all that part of the said county of Perry, which is hereby taken from the county of Randolph, shall constitute a separate and distinct precinct, which shall continue to vote with the county of Randolph in all general and special elections for senators and representatives to the general assembly of this state: and all that part which is taken from the county of Jackson, shall for the like period, in like manner continue to vote with the county of Jackson for representatives, and with the counties of Franklin and Jackson for senators to the general assembly, in all general and special elections, until otherwise directed by law: *Provided*, That the said county of Perry shall in all other elections, and for all other officers, be entitled to vote as a free and independent county, without any other or further restriction, than is imposed upon other counties in this state. The said county of Perry shall be attached to and form a part of the second judicial circuit.

**Compensation to commissioners**

SEC. 8. The said commissioners shall receive as a compensation for their services, the sum of one dollar and fifty cents per day, for each day by them necessarily spent in discharging the duties imposed upon them by this act.

to be allowed by the county commissioners' court, and paid out of the county treasury.

This act to take effect from and after its passage.

[Approved, Jan. 29, 1827.]

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## TAZEWELL COUNTY.

### *AN ACT creating the County of Tazewell.*

In force Jan.  
ry 31, 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all that tract of country lying within the following boundaries, to-wit: Beginning at the north east corner of township twenty, north of the base line, and east of the third principal meridian line, thence north with said range line, to the north line of township twenty-eight north, thence west to the Illinois river, thence down said Illinois river to the north line of township twenty, north of the base line, and west of the third principal meridian; thence east with said township line to the place of beginning, shall constitute a new county, to be called Tazewell.

Boundaries

SEC. 2. For the purpose of fixing the permanent seat of justice of said county, the following persons are hereby appointed commissioners, viz: Thomas M. Neal, William Lee D. Ewing, and Job Fletcher, who, or a majority of them, being first duly sworn before some justice of the peace of this state, faithfully to take into consideration the convenience of the people, the situation of the settlement, with an eye to future population, and the eligibility of the place, shall meet at the house of William Orendorff, in Their duty said county, on the third Monday in March next, or within five days thereafter, and proceed to examine and determine on a place for the permanent seat of justice of said county, and designate the same: when the said commissioners shall designate the place aforesaid, they shall certify the same to the county commissioners of said county, as soon as they shall be qualified to office, the half quarter or quarter section of land so selected for said county seat; and it shall be the duty of the said county commissioners, as soon thereafter as they may be enabled, to enter the same in the land office of the district in which the same may be; and they shall immediately thereafter, lay off the same or any part thereof, which they may think proper, into town lots; which town, when so laid off, shall be called Mackinaw, and sell the same on such terms and conditions as may be most advantageous to the interests of said Name of the town.

county; the proceeds of the sales of which, shall be appropriated to the erection of a sufficient court house and jail. When the property aforesaid shall have been so sold, the said county commissioners shall, when necessary, make titles to the same, in the name of themselves, and their successors in office.

Where courts shall be held

SEC. 3. Until public buildings shall be erected for the purpose, the courts shall be held at the house of William Orendorff, in said county, or such other place as the county commissioners may appoint.

SEC. 4. An election shall be held at the house of William Orendorff, in said county, on the second Monday of April next, for one sheriff, one coroner and three county commissioners for said county, who shall hold their offices until the next general election, and until their successors are qualified; which said election shall be conducted in all respects agreeably to the provisions of the law regulating elections: *Provided*, That the qualified voters present, may elect from among their number present, three qualified voters to act as judges of said election, who shall appoint two qualified voters to act as clerks.

Duty of the clerk

SEC. 5. It shall be the duty of the clerk of the circuit court of said county, to give notice at least ten days previous to the election, to be held on the second Monday in April next; and in case there shall be no clerk in said county, it shall be the duty of the recorder, or any justice of the peace residing within the limits of said county, and commissioned a justice of the peace for the county of Fayette, or Peoria, to give notice of the time and place of holding said election.

SEC. 6. The citizens of the said county of Tazewell, are hereby entitled in all respects, to the same rights and privileges, as are allowed in general, to other counties of this state.

Compensation to com'rs

SEC. 7. The commissioners appointed to locate the seat of justice of said county of Tazewell, shall receive the sum of one dollar and fifty cents per day for each day by them necessarily spent, in discharging the duties imposed on them by this act, to be allowed by the county commissioners' court, and to be paid out of the county treasury of said county.

To form a part of the first judicial circuit

SEC. 8. The said county of Tazewell, shall be attached to, and form a part of the first judicial district, and shall vote in all general elections, in conjunction with the counties of Fayette, Bond, Montgomery, and Shelby.

Attached

SEC. 9. All that tract of country lying north and east of said county of Tazewell, and within the county limits of Fayette county, shall be, and is hereby attached to the

county of Tazewell, and shall vote in all elections with said county; and shall have the same rights and privileges that the citizens of Tazewell now have.

This act to take effect from its passage.

[Approved, Jan. 31, 1827.]

## SHELBY COUNTY.

*AN ACT creating Shelby County.*

In force 23rd  
Jan 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That all that tract of country lying within the following boundaries, to-wit: Beginning at the north west corner of section nineteen, in township nine north, range one east, of the third principal meridian, thence north on the said meridian line, thirty miles to the north west corner of section nineteen, in township fourteen north; thence east thirty six miles to the north east corner of section twenty-four, township fourteen north, range six east; thence south thirty miles to the south east corner of section thirteen; thence west thirty six miles to the place of beginning, shall constitute a new county, to be called Shelby.

SEC. 2. For the purpose of fixing the permanent seat of justice of said county, the following persons are appointed commissioners, to-wit: John Hopton, Easton Whitton, and William Lee D. Ewing, who, or a majority of them, being first duly sworn before some justice of the peace of this state, faithfully to take into view the convenience of the people, the situation of the settlement, with an eye to future population, and the eligibility of the place; shall meet at the house of Barnet Bone, in said county, on the first Monday of April next, and proceed to examine and determine on a place for the permanent seat of justice of said county, and designate the same: *Provided*, The proprietor or proprietors of said land shall give to the county for the purpose of erecting public buildings, a quantity of land, not less than twenty acres, to be laid out in a square form, and divided into lots of a convenient size, and sold for the purpose of erecting public buildings in said county; but should the proprietor or proprietors refuse to make the donation as aforesaid, then, in that case, it shall be the duty of the said commissioners to fix on some other place for the seat of justice; as convenient as may be, to the place first selected: *Provided*, The proprietor or proprietors of the land, shall make a donation of twenty acres

Commissioners to locate the seat of justice

Donation

of land, to be laid out as above provided for; which place, when so fixed upon, shall be the county seat of said county. The said commissioners shall certify their proceedings to the next county commissioners' court, to be held in and for said county; which court shall cause a record thereof to be made in their books.

Where the  
courts to be  
held

SEC. 3. Until public buildings shall be erected for the purpose, the courts shall be held at the house of Barnet Bone, in said county.

Election

SEC. 4. An election shall be held at the house of the said Barnet Bone, on the second Monday of April next, for one sheriff, one coroner and three county commissioners for said county, who shall hold their offices until the next general election, and until their successors are qualified; which said election shall be conducted in all respects agreeably to the provisions of the law regulating elections: *Provided*, That the qualified voters present, may elect from among their number present, three qualified voters, to act as judges of said election, who shall appoint two qualified voters to act as clerks.

Clerk's duty

SEC. 5. It shall be the duty of the clerk of the circuit court of said county, to give public notice at least ten days previous to the election, to be held on the second Monday in April next; and in case there shall be no clerk in said county, it shall be the duty of the recorder, or any justice of the peace residing within the limits of said county, and commissioned a justice of the peace for the county of Fayette, to give notice of the time and place of holding said election.

Rights of the  
citizens

SEC. . The citizens of the said county of Shelby, are hereby entitled in all respects to the same rights and privileges, as are allowed in general, to the other counties of this state.

Compensa-  
tion to comr's

SEC. 7. The commissioners appointed to locate the seat of justice of said county of Shelby, shall receive the sum of one dollar and fifty cents per day, for each day by them necessarily spent in discharging the duties imposed on them by this act, to be allowed by the county commissioners' court, and to be paid out of the treasury of said county.

Attached  
part

SEC. 8. All that tract of country lying north of the aforesaid county, of, and within the present boundaries of the county of Fayette, shall be attached to the said county of Shelby, until otherwise provided by law; and for members of the general assembly, said county of Shelby and the attached parts thereof shall vote with Fayette, Bond, and Montgomery counties; and the clerks of the counties of Bond, Fayette, Montgomery, and Shelby, shall

With what  
counties to  
vote

meet at Vandalia, the county seat of Fayette, to compare the number of votes given for senator and representatives to the general assembly, and sign the necessary certificates of election at Vandalia, and forward the same to the person or persons entitled to such certificate of election.

SEC. 9. The county seat of Shelby county, when established, shall be called *Shelbyville*. Name of the seat of justice

SEC. 10. The north half of township nine north, range one west, all of townships ten, eleven, and twelve north, range one west of the third principal meridian, shall be attached to the county of Montgomery; and the citizens within the tract of country above described, shall have the same rights and privileges as the citizens of the county now, or shall hereafter have.

SEC. 11. The said county of Shelby shall be, and is hereby attached to the second judicial circuit.

Attached to  
second judi-  
cial circuit

This act to take effect from its passage.

[Approved, Jan. 23, 1827.]

## JO DAVIESS COUNTY.

*AN ACT establishing Jo Daviess County.*

In force Feb.  
17, 1827

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all that tract of country lying within the following boundaries, to wit: beginning on the north west corner of the state, thence down the Mississippi river to the northern line of the Military tract, thence east with said line to the Illinois river, thence north to the northern boundary of this state, thence west with said boundary line to the place of beginning, shall constitute a county: and, to perpetuate the memory of Colonel Joseph Hamilton Daviess, who fell in the battle of Tippecanoe, gallantly charging upon the enemy at the head of his corps, the said county shall be called *Jo Daviess*.

Boundaries

SEC. 2. The qualified voters residing within said county shall meet at the village of Galena on the first Monday of June next, and elect three county commissioners, one sheriff, and one coroner for said county; and Charles St. Vrain, David G. Bates and Patrick Hogan, are hereby appointed judges of said election, who shall give notice, appoint two clerks, and conduct the said election as other elections for the same officers are now required by law to be published and conducted.

Election

SEC. 3. That, for the present, until the true boundaries

of the county be known, and provision therefor be made by law, for establishing the permanent seat of justice for said county, all courts shall be held at the said village of Galena; the house or place of holding the same being made known by an order or notice to be entered on the records of the court.

Court to be at Galena

To be a part of the first judicial circuit

Justice of the peace may hold court

Duty of prosecuting attorney

To vote with Peoria

SEC. 4. The said county of Jo Daviess shall be, and constitute a part of the first judicial circuit; and a circuit court shall be held therein, on the first Mondays of June and October, in each and every year. In case the judge of the circuit court of said county, cannot attend at any regular term of said court, it shall be his duty to notify the clerk of said court of the same, who shall immediately on receiving such information, notify all the justices of the peace of said county, and it shall be the duty of the justices of the peace, or any three of them, of said county, on receiving such notice, to attend and hold said circuit court, who, when sitting in said court, shall have, possess and exercise the same power and jurisdiction, in relation to all civil and criminal causes, under capital, pending in said court, as the circuit judge of said county would have if presiding in said court. In all capital cases, the said judge shall preside in said court.

SEC. 5. It shall be the duty of the prosecuting attorney of the first judicial circuit, to prosecute in the circuit court of Jo Daviess county, or to depute some person skilled in the law, to do the same for him; and in case of failure therein, the said justices of the peace shall appoint a prosecutor, who shall receive the same fees, as the proper prosecuting officer, if present, might lawfully receive.

SEC. 6. The said county shall vote in all general elections, in conjunction with the counties of Peoria, Fulton, Schuyler, Adams and Pike.

[Approved, 17th Feb. 1827.]

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## COURTS.

*AN ACT to amend an act constituting and regulating the Supreme and Circuit Courts of this State, approved December 29, 1824.*

In force Jan. 12, 1827

Circuit courts abolished

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the sixteenth and seventeenth sections of the act entitled "An act constituting and regulating the supreme and circuit courts of this state," approved December 29, 1824, be, and the same are hereby repealed.*

SEC. 2. That hereafter the chief justice of the supreme court, and the associate justices thereof, shall hold the circuit courts of this state, in the manner hereinafter provided, and shall be governed by the same rules, regulations and restrictions, that are now applicable to the present circuit courts of this state.

SEC. 3. That the counties of Peoria, Fulton, Schuyler, Adams, Pike, Calhoun, Greene, Morgan and Sangamon shall compose the first judicial circuit. The counties of Madison, St. Clair, Monroe, Randolph, Washington, Clinton, Bond, Montgomery and Fayette shall compose the second judicial circuit. The counties of Jackson, Union, Alexander, Johnson, Pope, Franklin, Gallatin, Marion, Hamilton and Jefferson shall compose the third judicial circuit. The counties of Clay, Wayne, White, Edwards, Wabash, Lawrence, Crawford, Clark, Edgar and Vermilion shall compose the fourth judicial circuit.

SEC. 4. That Samuel D. Lockwood shall perform circuit duties in the first judicial circuit: Theophilus W. Smith in the second judicial circuit: Thomas C. Browne in the third judicial circuit, and William Wilson in the fourth judicial circuit.

Supreme  
judges to hold  
circuit courts

Circuits

Assigned  
them

[Approved, Jan. 12, 1827.]

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## AN ACT

*Supplement to an act entitled "An act to amend an act constituting and regulating the Supreme and Circuit Courts of this State," approved December 29, 1824.* In force Jan. 12, 1827

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the act to which this is a supplement, shall be construed to continue over to the circuit courts created by said act, all cases, suits, writs, recognizances, process and proceedings of every description and kind, pending at the passage of said act, in the circuit courts repealed by said act, with full power and authority in the courts so created, to proceed to hear and determine and have cognizance of all such causes, suits, writs, recognizances, process and proceedings, in the same manner the said repealed circuit courts could have done, had no change in said courts taken place. All writs, process and recognizances, which shall be issued or taken, returnable to, or for appearance, in the circuit courts of this state, before the statutes passed at the present session of the general assembly shall be

Suits continu-  
ed over &c

printed, shall be considered returnable to, and for appearance, in the courts created by the act to which this is supplemental.

[Approved, Jan. 12, 1827.]

AN ACT

In force Feb.  
17, 1827

*Changing the Terms of the Supreme and Circuit Courts of this State, and for other purposes.*

Terms of the  
courts

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the terms of the circuit courts in the several counties in this state shall be commenced and held at the respective times following, to wit: In the county of Greene, on the third Mondays in April and September: in the county of Morgan, on the fourth Monday in April and September: in the county of Sangamon, on the first Mondays in May and October: in the county of Tazewell, on the second Mondays in May and October: in the county of Peoria, on the next<sup>†</sup> Thursdays after the second Mondays in May and October: in the county of Fulton, on the third Mondays in May and October: in the county of Schuyler, on the next Thursdays after the third Mondays in May and October: in the county of Adams, on the next Tuesdays after the fourth Mondays in May and October: in the county of Pike, on the first Mondays in June and November, and in the county of Calhoun, on the next Thursdays after the first Mondays in June and November. In the county of Madison, on the last Mondays in February and July: in the county of St. Clair, on the first Mondays in March and August: in the county of Monroe, on the second Mondays in March and August: in the county of Randolph, on the third Mondays in March and August: in the county of Perry, on the fourth Mondays in March and August: in the county of Washington, on the next Thursdays after the fourth Mondays in March and August: in the county of Clinton, on the first Mondays in April and September: in the county of Bond, on the second Mondays in April and September: in the county of Montgomery, on the next Thursdays after the second Mondays in April and September: in the county of Shelby, on the third Mondays in April and September, and in the county of Fayette, on the next Thursdays after the third Mondays in April and September.—In the county of Hamilton, on the third Mondays in March and September: in the county of Jefferson, on the fourth Mondays in March and September: in the county of Ma-*

In the second  
circuit

In the third  
circuit

zion, on the Thursdays after the fourth Mondays in March and September: in the county of Franklin, on the first Mondays in April and October: in the county of Jackson, on the second Mondays in April and October: in the county of Union, on the third Mondays in April and October: in the county of Alexander, on the fourth Mondays in April and October: in the county of Johnson, on the first Thursdays after the fourth Mondays in April and October: in the county of Pope, on the first Mondays in May and November: in the county of Gallatin on the second Mondays in May and November. In the county of White, on the fourth Mondays in March and August: in the county of Edwards, on the first Mondays in April and September: in the county of Wabash, on the next Thursdays after the first Mondays in April and September: in the county of Lawrence, on the second Mondays in April and September: in the county of Crawford, on the third Mondays in April and September: in the county of Clark, on the fourth Mondays in April and September: in the county of Edgar, on the next Mondays after the fourth Mondays in April and September: in the county of Vermilion, on the next Thursdays after the circuit court commences in Edgar: in the county of Clay, on the next Thursdays after the commencement of the circuit court in Vermilion, and in the county of Wayne, on the next Monday after the court in Clay.

In the fourth circuit

SEC. 2. The several clerks of the circuit courts of this state, who were in office at the time of the passage of the act entitled "An act to amend an act constituting and regulating the supreme and circuit courts of this state," approved, January 12, 1827, and the supplement thereto, passed the same day, shall continue in their respective offices, and exercise all the duties appertaining thereto, until superseded in office by appointments under said acts; and when any of said clerks shall be superseded in office, it shall be their duty, respectively, to deliver over to their successors, all the records, books, papers, office furniture, and other public property appertaining to said office; and the respective circuit courts shall have authority to compel the delivery over as aforesaid, of such books, records, papers, furniture and other property appertaining to said office.

Clerks to remain in office until superseded by appointments

SEC. 3. The chief justice and the associate justices of the supreme court, may interchange and hold each other's circuit courts, as often as they may agree to do the same; and may award writs of *habeas corpus*, *ne exeat* and injunction, to run into each other's circuits; and such acts and writs shall have the same effect, and be obeyed in the same

Their duty when superseded

Judges may interchange circuits &c

Where a  
judge is inter-  
ested another  
judge may try  
the case

manner, as if the said acts and writs were done and issued by the proper justice of the circuit. If any justice of the circuit court, shall be interested in any cause in his circuit, it shall be his duty to notify the next nearest justice of the circuit court thereof; and such nearest justice when so notified shall attend and hold such court, for the trial of any such case.

Two terms of  
the circuit  
court to be  
held in each  
year

SEC. 4. There shall be two terms of the circuit court held annually in each of the counties in this state, at the court house thereof, or place provided for holding court, which terms shall commence at the respective times specified in the first section of this act, and shall be held by the chief justice and the associate justices, in their respective circuits, as established by law; and shall continue to sit from day to day, (Sundays excepted,) until all the business pending shall be disposed of, unless it shall be necessary sooner to close the term, to attend in the next county to hold court.

Provision in  
case of disabil-  
ity of judge

SEC. 5. When the chief justice or either of said associate justices, shall, by death, resignation, removal from office, or other unavoidable absence, fail to attend and hold any circuit court, which he is by this act required to hold, it shall be the duty of one or the other of said justices, on being informed that such court will not be held, to attend and hold such court in the same manner, and with the same powers and jurisdiction, as if presiding in his own circuit, until the cause which required him to do so shall be removed.

Successors

SEC. 6. When the chief justice or either of said associate justices shall be succeeded in office, it shall be the duty of his successor in office to preside and hold the courts in the circuit of the justice so succeeded.

Judge not at-  
tending court  
to stand ad-  
journed

SEC. 7. Should the chief justice or either of the said associate justices, fail to attend in any county in their respective circuits, on the day appointed for commencing the term of the circuit court therein, as required by this act, the court shall stand adjourned until the next day; and should the justice not attend by four o'clock, P. M. on the second day of the term, the court shall stand adjourned until the next succeeding term of the court; and all suits, writs, process, indictments and recognizances, of every description or kind, shall stand continued over to the next term of the court, as effectually as if the same had been continued by the order of the court.

Judges may  
appoint chan-  
cery terms

SEC. 8. The chief justice and the associate justices in their respective circuits, may at any regular term thereof, appoint a time for holding a chancery term of the court, to be entered of record, if in the opinion of the justice making such order, the business of the court shall require it;

and all proceedings, orders, judgments and decrees, made at such special term, shall have the same validity, as if made at the term appointed by this act.

SEC. 9. Whenever any person shall be in the custody of the sheriff of any county, charged with the commission of any capital offence, it shall be the duty of such sheriff, to give notice thereof in writing, to the presiding judge of the circuit, or in case of his inability to serve, absence from the state, or should there be no such judge, to the justice of the supreme court, nearest to said county, whose duty it shall be to issue a precept, under his hand and seal, to the sheriff of such county, commanding him to summon twenty-three grand jurors, and thirty-six petit jurors, to attend at the seat of justice of said county, on a day therein mentioned; which shall not be less than fifteen days, nor more than thirty days from the date of such precept: but the sheriff shall not give the notice herein required, to the presiding or other justice, when a regular term of the circuit court will be held in such county within fifty days from the day such person shall have been imprisoned.

SEC. 10. It shall be the duty of such presiding or other justice of the supreme court, who shall issue their precept as is provided in the preceding section, to hold a special term of the circuit court in such county, at the time specified in such precept; and such court shall proceed to the indictment, trial and sentence of such prisoner, in the same manner, as the circuit court, at a regular term, might or could do. The thirty-eighth and thirty-ninth sections of the act entitled "An act constituting and regulating the supreme and circuit courts of this state," approved December 29th, 1824, shall apply and be in force, in relation to the special terms provided for by this act.

SEC. 11. The several clerks of the circuit courts in this state, appointed, or who shall be appointed under the act entitled "An act to amend an act constituting and regulating the supreme and circuit courts of this state," approved January 12, 1827, and the supplement thereto, passed on the same day, shall give bond, be qualified and exercise the duties, as specified and required in the act, entitled "An act constituting and regulating the supreme and circuit courts of this state," approved December 29, 1824; and such other duties as are or shall be required by law.

SEC. 12. There shall be one term of the supreme court of this state held annually at the seat of government, on the first Monday of December; and shall continue to sit,

until all the business therein pending shall be decided or disposed of.

*Act repealed* SEC. 13. The thirty-seventh section of the act entitled "An act constituting and regulating the supreme and circuit courts of this state," approved December 29, 1824; the act entitled "An act supplemental to an act entitled an act regulating and establishing the supreme and circuit courts of this state," approved January 17, 1825; and the act entitled "An act changing the terms therein named, and regulating the practice in certain cases," approved January 26, 1826, are hereby repealed.

[Approved, Feb. 17th, 1827.]

## CRIMINAL CODE.

In force Aug.  
1, 1827.

### *AN ACT relative to Criminal Jurisprudence.*

*This act to  
constitute the  
criminal code*

*Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the following act shall, from and after the first day of August next, constitute the code of criminal jurisprudence of this state.*

### *FIRST DIVISION.*

#### *PERSONS CAPABLE OF COMMITTING CRIMES.*

*Definition of  
crime*

SEC. 1. A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be an union, or joint operation of act and intention, or criminal negligence.

*Intention*

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused.

*Who consid-  
ered of sound  
mind*

SEC. 3. A person shall be considered of sound mind who is neither an idiot or lunatic, or afflicted by insanity, and and who hath arrived at the age of fourteen years; or before that age, if such person know the distinction between good and evil.

*Infants*

SEC. 4. An infant under the age of ten years shall not be found guilty of any crime or misdemeanor.

*Lunatics*

SEC. 5. A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: *Provided*, the act so charged as criminal, shall have been committed in the condition of insanity.

*Idiots*

SEC. 6. An idiot shall not be found guilty, or punished

for any crime or misdemeanor with which he or she may be charged.

SEC. 7. Any person counselling, advising or encouraging an infant under the age of ten years, lunatic or idiot, to commit any offence, shall be prosecuted for such offence, when committed, as principal; and if found guilty, shall suffer the same punishment as would have been inflicted on said infant, lunatic or idiot, if he or she had possessed sound mind or discretion, and been found guilty.

SEC. 8. A married woman, acting under the threats, command or coercion of her husband, shall not be found guilty of any crime or misdemeanor, not punishable with death: *Provided*, it appear from all the facts and circumstances of the case, that violent threats, command or coercion were used. And in such cases the husband shall be prosecuted as principal, and receive the punishment which otherwise would have been inflicted on the wife, if she had been found guilty.

SEC. 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance or force of some other person or persons, for the purpose of causing the perpetration of an offence; in which case the person or persons so causing said drunkenness, for such malignant purpose, shall be considered principal, and suffer the same punishment as would have been inflicted on the person or persons committing the offence, if he, she or they had been possessed of sound reason and discretion.

SEC. 10. Acts committed by misfortune or accident, shall not be deemed criminal, where it satisfactorily appears that there was no evil design or intention, or culpable negligence.

SEC. 11. A person committing a crime or misdemeanor not punishable with death, under threats or menaces, which sufficiently shew that his or her life or member was in danger, or that he or she had reasonable cause to believe, and did actually believe that his or her life or member was in danger, shall not be found guilty, and such threats or menaces, being proved and established, the person or persons compelling by such threats or menaces, the commission of the offence shall be considered as principal or principals, and suffer the same punishment as if he, she or they, had perpetrated the offence.

SEC. 12. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offence during the continuance of the lunacy or insanity. If after verdict of guilty and before judgment pronounced, such person become lunatic or insane, then no judg-

Persons pro-  
curing infants,  
&c to com-  
mit crimes to  
be punished  
as principals

A woman act-  
ing by con-  
straint of her  
husband

Husband to be  
punished

Drunkenness  
The person  
causing it to  
be punished

Offences com-  
mitted under  
duress

Persons be-  
coming luna-  
tic or insane  
after the com-  
mission - a  
crime not to  
be tried

or punished until recovery

ment shall be given while such lunacy or insanity shall continue. And if after judgment, and before the execution of the sentence, such person become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all these cases, it shall be the duty of the court to empanel a jury to try the question whether the accused be, at the time of such empanelling, insane or lunatic.

A jury to try whether insane or lunatic

## SECOND DIVISION.

### Accessories

#### ACCESSORIES IN CRIMES.

##### Definition

SEC. 13. An accessory is he or she, who stands by, and aids, abets or assists; or who not being present, aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime: He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as a principal, and punished accordingly.

##### Punishment

SEC. 14. An accessory after the fact, is a person who, after full knowledge that the crime has been committed conceals it from the magistrate, or harbors and protects the person charged with, or found guilty of the crime.— Any person found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case, and the enormity of the crime.

##### Accessories after the fact

##### Punishment

## THIRD DIVISION.

#### WHO MAY BE WITNESSES IN CRIMINAL CASES.

##### Who may be witnesses

SEC. 5. The party or parties injured shall in all cases be competent witnesses, unless he, she or they, shall be rendered incompetent, by reason of his, her or their infamy, or other legal incompetency other than that of interest.— The credibility of all such witnesses, shall be left to the jury, as in other cases.

##### Their credibility

##### Negroes, &c. not allowed to testify

SEC. 16. No black or mulatto person, or Indian, shall be permitted to give evidence in favor or against any white person, in any case whatsoever. Every person who shall have one fourth part, or more of negro blood, shall be deemed a mulatto.

##### Approvers

SEC. 17. Approvers shall not be allowed to give testimony.

SEC. 18. The solemn affirmation of witnesses shall be

deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishment provided for those who commit wilful and corrupt perjury.

### FOURTH DIVISION.

#### CRIMES AGAINST THE GOVERNMENT AND PEOPLE.

crimes against government

SEC. 19. Crimes against the government and people shall consist in treason and misprision of treason, and can only be committed by persons owing allegiance to the state.

SEC. 20. Treason, shall consist in levying war against the government and people of this state, in the same, or being adherent to the enemies of this state, giving them aid, advice and comfort in this state, or elsewhere. Any person being hereof duly convicted of open deed by two or more witnesses, or voluntary confession, in open court, shall suffer the pains and penalty of death. And when the overt act of treason shall be committed without the limits of this state, the person charged therewith, may be arrested, tried and punished, in any county of this state, within the limits of which he may be found; and the offence may be charged to have been committed in the county where he may be arrested.

SEC. 21. Misprision of treason shall consist in the knowledge and concealment of treason, without otherwise assenting to, or participating in the crime. Any person found guilty thereof, shall be imprisoned for any term not exceeding three years, and fined in a sum not exceeding one thousand dollars, in the discretion of the court before whom the conviction shall be had.

### FIFTH DIVISION.

#### CRIMES AND OFFENCES AGAINST THE PERSON.

SEC. 22. Murder is the unlawful killing of a human being, in the peace of the people, with malice aforethought, either express or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means, by which human nature may be overcome, and death thereby occasioned.

SEC. 23. Express malice is that deliberate intention, unlawfully to take away the life of a fellow creature, which is manifested by external circumstances, capable of proof.

SEC. 24. Malice shall be implied, where no considera-

Treason and misprision of treason

Definition of treason

Punishment

Misprision of treason, definition of

Punishment

Murder, definition

**Implied malice** ble provocation appears, or where all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person or persons, convicted of the crime of murder shall be death.

**Punishment** **Manslaughter** **definition of** SEC. 25. *Manslaughter* is the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation whatever. It must be voluntary, upon a sudden heat of passion, or involuntary, in the commission of an unlawful act, or a lawful act, without due caution and circumspection.

**What will be justification** SEC. 26. In all cases of voluntary manslaughter, there must be some actual assault upon the person killing, or an attempt by the person killed, to commit a serious personal injury on the person killing. Provocation by words or threats written or verbal, or by menaces or contemptuous gestures, shall be in no case sufficient to free the person killing from the guilt and crime of murder.

**Sudden burst of passion** SEC. 27. The killing must be the result of that sudden, violent impulse of passion, supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given, and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder.

**Otherwise it may be murder** **Involuntary manslaughter** **definition of** SEC. 28. Involuntary manslaughter, shall consist in the killing of a human being, without any intention to do so, but in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence in an unlawful manner: *Provided, always,* That where such involuntary killing shall happen in the commission of an unlawful act which in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offence shall be deemed and adjudged to be murder.

**Punishment** SEC. 29. Every person convicted of the crime of manslaughter, shall be punished by imprisonment for a term not exceeding three years, and fined in a sum not exceeding one thousand dollars.

**The party killed must die within a year & a day, to make it murder or manslaughter** SEC. 30. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day, after the stroke received, or the cause of death administered; in the computation of which, the whole of the day upon which the hurt was done, shall be reckoned the first.

**Accused to be tried in the county where the injury is done** SEC. 31. If the injury be inflicted, in one county, and the party die in another county, or without the state, the accused shall be tried in the county where the cause of death was administered.

SEC. 32. Justifiable homicide is the killing of a human being in necessary self defence; or in defence of habitation, property or person, against one who manifestly intends, or endeavors by violence or surprise to commit a known felony, such as murder, rape, robbery, burglary and the like, upon either person or property; or against any person or persons who, manifestly intend and endeavor, in a violent, riotous or tumultuous manner, to enter the habitation of another, for the purpose of assaulting or offering personal violence, to any person dwelling or being therein.

SEC. 33. A bare fear of any of these offences to prevent which, the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person; and that the party killing, really acted under the influence of those fears and not in a spirit of revenge.

SEC. 34. If a person kill another in self defence, it must appear that the danger, was so urgent and pressing, that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary. And it must appear also, that the person killed was the assailant, or that the slayer had, really and in good faith, endeavored to decline any further struggle, before the mortal blow was given.

SEC. 35. If an officer in the execution of his office, in *Of officers* a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person, attempt to take a person charged with treason, murder, rape, burglary, robbery, arson, or any other offence, denominated felony by the common law, and he or they, be resisted in the endeavor to take the person accused, and to prevent the escape of the accused by reason of such resistance, he or she be killed, the officer or private person so killing, shall be justified: *Provided however*, That such officer or private person, previous to such killing, shall have used all reasonable efforts to take the accused, without success; and that from all probability, there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such accused person.

SEC. 36. Justifiable homicide, may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer who in the execution of public justice, puts a person to death, in virtue of a judgment of a competent court of justice, shall be justified. The officer must how-

Bare fear will not justify killing

Self defence

Proviso

Justifiable homicide

In the execution of public justice ever, in the performance of his duty, proceed according to the sentence and the law of the land.

Excusable homicide, definition of SEC. 37. Excusable homicide, by misadventure, is where a person is doing a lawful act, without any intention of killing, yet unfortunately kills another; as where a man is at work with an axe, and the head flies off, and kills a bye-stander; or where a parent is moderately correcting his child, or master his servant or scholar; or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful. But if the parent or master exceed the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument or the quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

Illustration

Proviso

May be murder, or manslaughter

Similar cases

When justifiable, accused to be acquitted

When the killing is proved, the accused must prove the circumstances which justify or mitigate

Concealment of the death of bastards

Punishment

Distinction between petit treason and murder, abolished

Duelling

ever, in the performance of his duty, proceed according to the sentence and the law of the land.

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SEC. 38. All other instances which stand upon the same footing of reason and justice, as those enumerated, shall be considered justifiable or excusable homicide.

SEC. 39. The homicide appearing to be justifiable or excusable, the person indicted, shall, upon his trial, be fully acquitted and discharged.

SEC. 40. The killing being proved, the burthen of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifest, that the crime committed, only amounts to manslaughter, or that the accused was justified, or excused in committing the homicide.

SEC. 41. If any woman shall endeavor privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which if born alive, would by law, be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother being convicted thereof, shall suffer imprisonment in the county jail, for a term not exceeding one year: *Provided however*, That nothing herein contained, shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

SEC. 42. The distinction that heretofore prevailed between petit treason and murder, is hereby abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and if convicted, punished accordingly.

SEC. 43. If any person shall hereafter wilfully and maliciously, or by agreement, fight a duel, or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party,

and in so doing, shall kill his antagonist, or any other person or persons, or shall inflict such wound, as that the party injured shall die thereof, within one year thereafter, every such offender, his second, as well as the second of the person killed, and all other aiders, abettors and counsellors, being thereof duly convicted, shall be considered to have committed the crime of murder, and shall be punished in the same manner.

Punishment

SEC. 44. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge, or agree to fight a duel, every person so offending, shall, upon conviction thereof, be rendered incapable of holding, or being elected to any office of profit, trust or emolument, either civil or military, under the government of this state, and be fined in a sum not exceeding one hundred dollars.

Challenges to  
fight duels.

SEC. 45. If any person shall willingly or knowingly carry or deliver any written challenge, or verbally deliver any message intended as, or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid, as a second, or aid, or give countenance thereto, such persons so offending, being thereof duly convicted, shall be subject to the same fine and disabilities, as are provided in case of sending or accepting a challenge, as aforesaid.

Seconds.

SEC. 46. Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison, or other noxious or destructive substance or liquid, with an intention to cause the death of such person, or to procure the miscarriage of any woman, then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, and be fined in a sum not exceeding one thousand dollars.

Poisoning.

SEC. 47. *Mayhem* consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, ear or lip, or cut off or disable any limb or member of another, with an intention in so doing to maim or disfigure such person; or shall voluntarily, maliciously and of purpose, pull or put out an eye, or eyes, while fighting or otherwise, every such person shall be guilty of mayhem; and on conviction, shall be punished by imprisonment, for a term not exceeding five years, and be fined in a sum not exceeding one thousand dollars.

Mayhem, de-  
finition of

Punishment

SEC. 48. *Rape* is the carnal knowledge of a female,

**Rape, definition of** forcibly and against her will. Every male person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child, under the age of ten years, either with, or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape, shall be publicly whipped, not less than fifty, nor more than one hundred stripes, on his bare back, and be imprisoned for a term, not more than ten years.

**Punishment**

**What to be proved**

SEC. 49. It shall not be necessary to prove emission, to convict any person of the crime of rape, or of the crime against nature.

**Crime against nature**

SEC. 50. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by fine, imprisonment and whipping, in the discretion of the court.

**Assault, definition of**

SEC. 51. An assault, is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

**With intent to murder, &c**

SEC. 52. An assault with an intent to commit murder, rape, mayhem, robbery, or larceny, shall subject the offender to be fined, in a sum not exceeding one thousand dollars, and imprisonment for a term not exceeding three years.

**Punishment**

SEC. 53. Assault and battery is the unlawful beating of another.

**False imprisonment, definition of**

SEC. 54. *False imprisonment* is an unlawful violation of the personal liberty of another, and consists in confinement or detention, without sufficient legal authority. Any person convicted of false imprisonment, shall be fined in any sum not exceeding five hundred dollars, or imprisoned for a term not exceeding one year.

**Punishment**

SEC. 55. *Kidnapping* is the forcible abduction, or stealing away of a man, woman or child, from his or her own country, and sending or taking him or her into another.

**Punishment**

SEC. 56. Every person who shall forcibly steal, take or arrest, any man, woman, or child, whether white, black or colored, in this state, and carry the same to another country, state or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him, her or them, out of this state, without having established a claim according to the laws of the United States, shall upon conviction, be deemed guilty of kidnapping.— Every person found guilty of kidnapping, shall be fined in a sum not exceeding one thousand dollars, and be imprisoned for a term not exceeding three years, for each person thus kidnapped, or attempted to be kidnapped.

SEC. 57. Every person who shall hire, persuade, en-

tice, decoy, or seduce, by false promises, misrepresentations, and the like, any negro, mulatto or colored person, not being a slave, to go out of this state, or to be taken or removed therefrom, for the purpose, and with the intent to sell such negro, mulatto, or colored person into slavery or involuntary servitude, or otherwise to employ him or her, for his or her own use, or to the use of another, against the free will and consent of such negro, mulatto, or colored person; any person so offending, shall be deemed to have committed the crime of kidnapping, and upon conviction thereof, be punished as in the preceding section.

Kidnapping  
free negroes

Punishment

### SIXTH DIVISION.

#### CRIMES AND OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.

SEC. 58. Every person who shall wilfully and maliciously burn or cause to be burnt any dwelling house, kitchen, office, shop, barn, stable, store-house, ware-house, malt-house, still house, factory, mill, pottery, or other building, the property of any other person, or any church, meeting-house, school-house, state-house, court-house, work-house, jail, or other public building, or any boat or other water craft, or any bridge of the value of fifty dollars, erected across any of the waters of this state; every person so offending, shall be deemed guilty of arson, and upon conviction thereof, shall be fined in an amount equal to the full value of the property destroyed; shall be publicly whipped, not exceeding one hundred lashes on his bare back, and imprisoned not exceeding three years. And should the life or lives of any person be lost, in consequence of any such burning as aforesaid, such offender shall be deemed guilty of murder, and may be indicted and punished accordingly.

Arson

Punishment

SEC. 59. Every person who shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with intent to burn or destroy the same, shall be deemed guilty of a high misdemeanor; and upon conviction thereof, shall be imprisoned for a term not exceeding two years, and be fined in a sum not exceeding five hundred dollars.

SEC. 60. Every person who shall, in the night time, wilfully, maliciously, and forcibly break and enter, or wilfully and maliciously, without force (the doors or windows being open) enter into any dwelling house, kitchen, office, shop, store-house, ware-house, malt-house, still-house, mill, pottery, factory, water craft, church, or meeting-house, with intent to commit murder, robbery, rape, mayhem,

Burglary

## Punishment

larceny, or other felony, shall be deemed guilty of burglary; and upon conviction thereof, shall be whipped, not less than fifty, nor more than one hundred lashes, on his bare back; be fined a sum not more than one thousand dollars, and be imprisoned for a term not exceeding three years.

## SEVENTH DIVISION.

## CRIMES AND OFFENCES RELATIVE TO PROPERTY.

Robbery, defi-  
nition of .

Punishment

SEC. 61. Robbery is the felonious and violent taking of money, goods or other valuable thing, from the person of another, by force or intimidation. Every person guilty of robbery, shall be fined in a sum not exceeding one thousand dollars, publicly whipped, not less than fifty, nor more than one hundred lashes, on his bare back, and imprisoned, for a term not exceeding three years.

Larceny, de-  
finition of .

Punishment

SEC. 62. Larceny is the felonious stealing, taking and carrying, or leading, riding, or driving away the personal goods of another. Larceny shall embrace every theft, which deprives another of his money, or other personal property, or of those means or muniments, by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house in the day time, shall be deemed larceny. Larceny may also be committed by feloniously taking and carrying away any bond, bill, note, receipt, or any instrument of writing of value to the owner. Every person convicted of larceny shall be fined in a sum not less than half the value of the thing stolen, shall be whipped not more than one hundred lashes, and imprisoned for a term not exceeding two years.

Mode of pro-  
ceeding  
against ne-  
groes for lar-  
ceny

To be tried  
before a jus-  
tice of the  
peace

SEC. 63. That justices of the peace, of the several counties in this state, shall have jurisdiction in all cases of larceny, committed in their respective counties, by any free negro or mulatto, slaves, indentured or registered servants. And it shall be the duty of any justice of the peace, upon proper information made before him, upon oath, of the commission of the aforesaid offence, by any of the persons aforesaid, to issue his warrant for the apprehension of such accused person, and to cause a jury to be summoned for the purpose of trying such accused person; and the jury, when sworn, if they find such accused person guilty, shall fix by their verdict, the number of stripes such accused person shall receive: and the justice shall record the verdict, and order the constable attending, or any other constable to inflict the number of

stripes so fixed by the jury: *Provided*, such accused person shall not be fined or imprisoned.

SEC. 64. Every person who, for his own gain, or to prevent the owner from again possessing his property, shall bury or receive stolen goods, or any thing, the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been obtained by stealing, robbery or burglary, shall, upon conviction, be punished in the same manner as the principal would have been upon conviction; and every such person may be tried, convicted and punished, as well before, as *Punishment after the trial of the principal.*

SEC. 65. All property obtained by larceny, robbery, or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property; such owner may maintain his civil action, not only against the felon, but against any person in whose possession he may find the same.

SEC. 66. Every person who shall mark or brand, or shall alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, any one or more head of neat cattle, or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, with intent thereby to steal the same, or to prevent identification, by the true owner, shall, on conviction thereof, be liable to the same punishment and disabilities, as are provided for those guilty of larceny.

SEC. 67. Every servant, officer or person employed in any public department, station or office of government of this state, or any county of this state, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take, and carry away, any money, goods, chattels, effects, book or books of record, or of account, bond or bonds, promissory note or notes, bank bills or notes, or any other writing or security for the payment of money, of whatever description it may be, being the property of said state, county or corporate body, shall, on conviction, be punished by fine, not exceeding five thousand dollars, *Punishment* and imprisoned for a term not exceeding three years.

SEC. 68. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, will, bond or any other writing sealed, or any bank bill or note, check, warrant for the payment of money or other thing, or other security for the payment of money, or the delivery of goods; or any certificate, or other public security of this state, or of the United States, or any of them, for the payment of money; or any receipt,

Burying or re-  
ceiving stolen  
goods

Civil actions  
may be main-  
tained for sto-  
len goods

Altering  
brands and  
marks

With intent  
to steal

Embezzle-  
ment by offi-  
cers

Fraudulently  
destroying  
deeds and oth-  
er papers

acquittance, release, defeasance, discharge of any debt, suit or other demand; or any transfer or assurance of money, stock, goods, chattels or other property; or any letter of attorney, or other power; or any day book or other book of account; or any agreement or contract whatsoever, with intent to defraud, prejudice or injure, any person or body corporate, shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, and also be imprisoned for a term not exceeding two years.

## Punishment

Destroying  
land marks

## Punishment

Embezzle-  
ment by ap-  
prentices  
and servantsDeemed lar-  
cenyConversion by  
bailee with in-  
tent to steal,  
deemed lar-  
cenyEmbezzle-  
ment by lodg-  
ers, deemed  
larceny

SEC. 69. Every person who shall, knowingly, maliciously and fraudulently cut, fell, alter or remove any certain boundary tree, or other allowed land mark, to the wrong of his neighbor, or any other person, shall, on conviction, pay a fine not exceeding one hundred dollars, or be imprisoned not exceeding three months.

SEC. 70. If any clerk, apprentice or servant whether bound or hired, to whom any money, bank bill, or note, or goods or chattels, shall be entrusted or delivered, by his or her master or mistress, shall withdraw himself or herself from his or her said master or mistress, and go away with the said money, bank bill, or note, or goods or chattels, or any part thereof, with intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed, by his or her said master or mistress, or being in the service of his or her said master or mistress, shall embezzle the said money, bank bill, or note, or goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use, with like purpose to steal the same; then in every such case, the person so offending shall be deemed guilty of larceny, and be punished accordingly.

SEC. 71. If any bailee of any money, bank bills or notes, or goods or chattels, shall convert the same to his, or her own use, with an intent to steal the same, he shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and on conviction shall be punished accordingly.

SEC. 72. If any lodger shall take away, with intent to steal, embezzle, or purloin any bedding, furniture, goods, or chattels, which he or she is to use in, or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction, shall be punished accordingly.

## EIGHTH DIVISION.

## FORGERY AND COUNTERFEITING.

Forgery of  
public re-  
cords, &c.

SEC. 73. Every person who shall falsely make, alter, forge or counterfeit any record, or other authentic matter of a

public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, or due bill for the payment of money or other property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order, or any accountable receipt, or any order or warrant, or request for the payment of money, or the delivery of goods and chattels of any kind, or for the delivery of any instrument of writing, or any acquittance, release, or receipt for money or goods, or any acquittance, release or discharge of any debt, account, action, suit, demand or other thing, real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatever; or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities; or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal; or any acceptance or endorsement of any bill of exchange, promissory note, draft or order; or assignment of any bond, writing obligatory, or promissory note for money or property, or shall counterfeit or forge the seal or hand writing of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this state, or not; or shall utter, publish, pass, or attempt to pass as true and genuine, or cause to be uttered, published, passed, or attempted to be passed as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body, politic or corporate, reside in, or belong to this state or not, every person so offending, shall be deemed guilty of forgery; and upon conviction thereof, shall receive not less than twenty, nor more than one hundred lashes, on his bare back, shall be imprisoned for a term not exceeding three years, and be fined in a sum not exceeding one thousand dollars.

SEC. 74. Every person who shall counterfeit any of the species of gold or silver coin, now current, or that shall hereafter be current in this state, or shall pass or give in payment, or offer to pass or give in payment, such counterfeited coin, or to permit, cause or procure the same to be uttered or passed, with intention to defraud any person, body politic or corporate, knowing the same to be counterfeiting of coins

**Punishment** **feited**, shall be deemed guilty of counterfeiting, and being thereof duly convicted, shall be whipped not less than thirty, nor more than one hundred lashes, imprisoned not exceeding three years, and fined in a sum not exceeding one thousand dollars.

**Having counterfeit coin with intent to utter it** **SEC. 75.** Every person who shall have in his or her possession, or receive for any other person, any counterfeit gold or silver coin or coins of the species now current, or hereafter to be current in this state, with intention to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be imprisoned for a term not exceeding three years, and fined in a sum not exceeding five hundred dollars.

**Punishment**

**Having or receiving forged or counterfeit Securities** **SEC. 76.** Every person who shall have in his or her possession, or shall receive from any other person, any forged or counterfeit promissory note or notes, or bank bill or bills, for the payment of money, with intention to utter or pass the same; or to permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this state or not, knowing the same to be forged or counterfeited; or shall have or keep in his possession, any blank or unfinished note, or bank bill, made in the form or similitude of any promissory note, or bill for the payment of money, made to be issued by any incorporated bank, or banking company, in this state or elsewhere, with intention to fill up and complete such blank and unfinished note or bill, or to permit or cause or procure the same to be filled up and completed in order to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, to defraud any person or persons, body politic or corporate, whether in this state or elsewhere, shall, upon conviction thereof, be whipped not less than thirty, nor more than one hundred lashes, be imprisoned not exceeding three years, and fined in a sum not exceeding five hundred dollars.

**Or bank notes**

**Punishment**

**Fictitious securities**

**An attempt to utter them**

**SEC. 77.** Every person who shall make, pass, utter or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this state or elsewhere; or with like intention, shall attempt to pass, utter or publish, or shall have in his or her possession, with like intent to pass, utter or publish any fictitious bill, note or check, purporting to be the bill, note or check, or other instrument of writing for the payment of money or property, of some bank, corporation, copartnership, or indi-

vidual, when in fact there shall be no such bank, corporation, copartnership or individual in existence, the said person knowing the said bill, note, check or instrument of writing for the payment of money or property to be fictitious, shall be deemed guilty of the crime of *forgery*, and on conviction, shall be punished in the same manner.

SEC. 78. Every person who shall make or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine or thing whatsoever, made use of in counterfeiting the coin now current, or hereafter to be current in this state, or in counterfeiting bank notes, or bills, whether such bank be situated in this state or not, shall, upon conviction thereof, be imprisoned for a term not exceeding two years, and be fined in a sum not exceeding five hundred dollars. All such dies, plates, apparatus, paper, metal, machines, or things intended for the purposes aforesaid, shall be destroyed.

SEC. 79. On the trial of any person for forging any bill, or note, purporting to be the bill or note of some incorporated bank or company, or for passing or attempting to pass, or having in possession, with intent to pass any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company, by the charter or act of incorporation, but the same may be proved by general reputation.

SEC. 80. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

SEC. 81. Every person who shall fraudulently forge, deface, corrupt, or counterfeit the seal of this state, or the seal of any court or public officer, by law entitled to have and use a seal, and shall make use of the same, or shall counterfeit or forge the signature of any public officer, or shall unlawfully and corruptly, with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate or other writing, or who shall have in his possession or custody any such counterfeited seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall be thereof convicted, shall be fined in a sum not exceeding one thousand dollars, and imprisoned not exceeding three years.

### NINTH DIVISION.

#### CRIMES AND OFFENCES AGAINST PUBLIC JUSTICE.

SEC. 82. Every person having taken a lawful oath or made affirmation in any judicial proceeding, or in any other matter, where, by law, an oath or affirmation is required,

**Punishment** ed, who shall swear or affirm wilfully, corruptly and falsely, in a matter material to the issue or point in question; or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury, or subornation of perjury, (as the case may be,) and upon conviction thereof, shall be fined in a sum not exceeding one thousand dollars, and be imprisoned for a term not exceeding three years.

**Deemed murder in certain cases**

**Sec. 83.** Every person who shall, by wilful and corrupt perjury or subornation of perjury, procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and upon conviction thereof, shall suffer the punishment of death.

**Indictment for, what sufficient**

**Sec. 84.** In every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and before what court or authority the oath or affirmation was taken, avering such court or other authority to have had full power to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of any record or proceedings, either in law or equity, other than as aforesaid; and without setting forth the commission, or authority of the court or other authority before whom the perjury was committed; or the form of the oath or affirmation, or the manner of administering the same.

**Averment**

**Bribery**

**Of officers & members of the general assembly**

**Sec. 85.** If any person shall directly or indirectly give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward, or any other thing, to obtain or procure the opinion, judgment or decree of any judge or justice, acting within this state, or to corrupt, induce or influence such judge or justice to be more favorable to one side than to the other, in any suit, matter or cause depending, or to be brought before him or them; or shall directly or indirectly give any sum or sums of money or other bribe, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward, or other thing, to obtain, procure, or influence the vote of any member of the general assembly, or to incline, induce or influence any such member to be more favorable to one side than to the other, on any question, election, matter or thing, pending, or to be brought before the general assembly, or either house thereof; the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with intent and for the purpose aforesaid, and the judge, justice or member of the

general assembly, who shall in any wise accept or receive the same, shall be deemed guilty of *bribery*, and on conviction shall be fined not exceeding one thousand dollars, and imprisoned not exceeding one year, and shall be, thereafter, incapable of holding any office of honor, trust, or profit within the state, and of voting at any election.

Acceptance  
deemed bri-  
bery, and pun-  
ished by fine,  
imprisonment  
and disquali-  
fication

SEC. 86. If any person shall directly or indirectly give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation, or security, for the payment of any money, present, or reward, or any other thing, to any judge, justice, sheriff, coroner, clerk, constable, jailer, attorney general or circuit attorney, member of the general assembly, or other officer ministerial or judicial, (but such fees as are allowed by law) with intent to induce or influence such officer to appoint any person to any office, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercised any power in him vested; or performed any duty of him required with partiality or favor, or otherwise contrary to law; the person so giving, and the officer so receiving any money, bribe, present, reward, promise, contract, obligation or security with intent, or for the purpose, or consideration aforesaid, shall be deemed guilty of bribery, and, on conviction, shall be fined not exceeding one thousand dollars, be imprisoned not exceeding one year, and shall thereafter be incapable of holding any office of honor, trust or profit in this state, and of voting at any election.

Giving bribes  
to officers, &c

Selling offices

The giver &  
receiver, both  
guilty of bri-  
bery

Punishment

SEC. 87. Every person who shall offer or attempt to bribe any member of the general assembly, judge, justice, sheriff, coroner, clerk, constable, jailer, attorney general, circuit attorney, or other ministerial or judicial officer, in any of the cases, mentioned in either of the two preceding sections; and every member of the general assembly, judge, justice, sheriff, coroner, clerk, constable, jailer, attorney general, circuit attorney, or other officer, ministerial or judicial, who shall propose or agree to receive a bribe, in any of the cases mentioned in either of the two preceding sections, shall on conviction, be fined in a sum not exceeding five hundred dollars.

Attempts to  
bribe

Punishment

SEC. 88. If any judge, justice, clerk, sheriff, coroner, or other public officer, or any other person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance or contract, or shall knowingly and willingly take off, discharge or conceal any issue, forfeited recognizance, or

Embezzle-  
ment of re-  
cords and oth-  
er papers  
falsifying

other forfeiture, or shall forge, deface, or falsify any document or instrument, recorded, or any registry, acknowledgment, or certificate, or shall alter, deface, or falsify any minute, document, book or any proceeding whatever of, or belonging to any public office within this state; the person so offending, and being thereof duly convicted, shall be fined in any sum not exceeding five hundred dollars, and imprisoned for any term not exceeding one year.

## Punishment

SEC. 89. Every jailer who shall be guilty of wilful inhumanity or oppression, to any prisoner under his care or custody, shall be fined in any sum not exceeding five hundred dollars, and be removed from his office.

Jailers, for in-  
humanity,  
punished

SEC. 90. If any officer, after the expiration of the time

Officers de-  
taining papers  
from suc-  
cessors

for which he may have been appointed or elected, or after he shall have resigned or been legally removed from his office, shall wilfully and unlawfully withhold or detain from his successor, the records, papers, documents or other writings or things, appertaining and belonging to his office, or mutilate, destroy, take away, or otherwise prevent the complete possession by his successor of said records, documents, papers, or other writings or things; such person so offending, shall be fined in any sum not exceeding one thousand dollars.

Or mutilating  
them

SEC. 91. If any person shall acknowledge or procure to be acknowledged, any fine, common recovery, deed, mortgage, recognizance, bail or judgment, in the name of any other person, by personating such other person; such person so offending, shall be deemed guilty of a high misdemeanor, and fined in a sum not exceeding five hundred dollars, and imprisoned for a term not exceeding one year.

Obstructing  
the execution  
of process

SEC. 92. If any person shall knowingly and wilfully obstruct, resist, or oppose any sheriff, coroner, constable, or other officer of this state, or other person duly authorized in serving or attempting to serve, or execute any lawful process, or order of any court, judge, or justice, or any other legal process whatever; or shall assault or beat any sheriff, coroner, constable, or other officer or person duly authorized in serving or executing any process or order, aforesaid, or for having served or executed the same; every person, so offending, shall be fined in a sum not exceeding five hundred dollars, and imprisoned for a term not exceeding one year: *Provided*, Any officer whatever, that may or shall assault or beat any individual, under colour of his commission, without a lawful necessity so to do, shall on conviction, suffer the same punishment.

## Punishment

Officer assaul-  
ting without  
necessity

SEC. 93. If any person or persons, shall by force, set at liberty, or rescue any person who shall have been found guilty, or convicted of a crime, the punishment of which

Rescue in cap-  
ital cases after  
conviction  
death

is death; every person so offending, and being convicted thereof, shall suffer death. And if any person or persons shall by force, set at liberty or rescue any person who, before conviction, stands committed for any capital offence, or any person committed for, or convicted of any other crime or misdemeanor; every person so offending, shall on conviction, be fined not exceeding one thousand dollars, and imprisoned, not exceeding three years.

SEC. 94. If any person or persons, shall rescue another in legal custody, on civil process, such person or persons, shall upon conviction, be fined in any sum not exceeding the sum for which said civil process was issued.

SEC. 95. If any person shall aid or assist a prisoner lawfully committed or detained, in any jail, for any offence against this state, or who shall be lawfully confined, by any civil process, to make his or her escape from jail, although no escape be actually made; or if any person shall convey or cause to be delivered to such prisoner, any disguise instrument or arms, proper to facilitate the escape of such prisoner; any such person (although no escape or attempt to escape be actually made) shall on conviction, be punished by fine, not exceeding one thousand dollars, and imprisonment not exceeding one year.

SEC. 96. If any person shall aid or assist any prisoner to attempt to escape, or shall rescue or attempt to rescue any prisoner, from the custody of any sheriff, coroner, constable, officer or other person, who shall have the lawful custody of such prisoner; every person so offending, shall on conviction, be fined not exceeding one thousand dollars, and imprisoned, not exceeding two years.

SEC. 97. If any person who shall be arrested or in jail upon any legal, civil or criminal process, or commitment, shall escape from the custody of any sheriff, coroner, constable, officer or other person, or from jail, without being thereof legally acquitted or discharged; every such person being thereof convicted, shall be fined not exceeding five hundred dollars, and imprisoned not exceeding six months.

SEC. 98. If any sheriff, coroner, jailer, keeper of a prison, constable or any other officer, or person whatever, having any prisoner in his legal custody, either before or after conviction, shall voluntarily suffer or permit such prisoner to escape or go at large; every such officer or person so offending, shall upon conviction, be imprisoned for a term not exceeding five years, and fined in a sum not exceeding one thousand dollars. A negligent escape of a person charged with a criminal offence, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor,

Before conviction

Punishment

In civil cases

Aiding the escape of prisoners from jail

Punishment

Aiding in attempts to escape, or rescue from officers

Punishment

Punishment

Officers voluntarily permitting escapes

Punishment

Negligent escape

**Punishment** and punished by fine, not exceeding five hundred dollars.

**Sheriff, &c** SEC. 99. If any sheriff, coroner, keeper of a jail, constable or other officer, shall wilfully refuse to receive or arrest any person charged with a criminal offence, then such sheriff, coroner, jailer, constable, or other officer, shall on conviction, be fined not exceeding five hundred dollars, and imprisoned not exceeding six months.

**Punishment**

**Compounding** SEC. 100. If any person shall take money, goods, chattels, lands, or other reward, or promise thereof, to compound any criminal offence, such person or persons, shall be fined in double the sum, or value of the thing agreed for or taken; but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offence.

**Conspiracy** SEC. 101. If any two or more persons shall conspire or agree, falsely and maliciously to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offence, each of the persons so offending, shall, on conviction, be fined not exceeding one thousand dollars, and imprisoned not exceeding one year.

**Punishment**

**Usurpation** SEC. 102. If any person shall take upon himself to exercise or officiate in any office or place of authority in this state, without being lawfully authorized thereto, he shall, upon conviction, be fined in a sum not exceeding two hundred dollars.

**Punishment**

**Embracery,** SEC. 103. *Embracery* is an attempt to influence a juror or jurors corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, entertainments and the like. Every embracer who shall procure any juror to take money, gain, or profit, or shall corruptly influence any juror, by persuasions, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall be fined not exceeding five hundred dollars, and imprisoned not exceeding one year. And any juror convicted of taking money, gain, or profit, or corruptly being influenced as aforesaid, shall be fined not exceeding five hundred dollars, and imprisoned not exceeding one year; and further, be forever disqualified to act as a juror.

**Punishment**

**Barratry, de-** SEC. 104. If any person or persons shall wickedly and wilfully excite or stir up any suits or quarrels, between the people of this state, either at law or otherwise, with a view to promote strife and contention; every such person so offending, shall be deemed to have committed the crime of *common barratry*, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars; and if he be an attorney or counsellor at law, he shall be sus-

**Punishment,**

**if a lawyer**

pended from the practice for any time not exceeding six months.

SEC. 105. If any person shall, hereafter, officiously intermeddle in any suit at common law, or in chancery, that no way belongs to, or concerns such person, by maintaining or assisting either party with money or otherwise to prosecute or defend such suit, with a view to promote litigation; every such person so offending, shall be deemed to have committed the crime of *maintenance*, and upon conviction thereof, shall be fined as in case of common barratry: *Provided*, That it shall not be considered maintenance for a man to maintain the suit of his kinsman, servant, or poor neighbor out of charity.

SEC. 106. If any judge, justice, sheriff, coroner, constable, clerk or other officer of this state, ministerial or judicial, shall wilfully or corruptly receive or take any fee or reward, to execute and do his duty as such officer, except such as is, or shall be allowed by law, or if any such officer shall wilfully or corruptly ask or demand, as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as is or shall be allowed by law; every officer so offending, shall be deemed guilty of extortion, and be fined in a sum not exceeding two hundred dollars.

SEC. 107. Every clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor, attorney general or circuit attorney, who shall wilfully and corruptly be guilty of oppression, malfeasance or partiality in the discharge of his official duties, or shall be guilty of any palpable omission of duty, shall upon conviction thereof, be fined in a sum not exceeding two hundred dollars, and the court shall have power, upon the recommendation of the jury, to add to the judgment of the court, that any officer so convicted, shall be removed from his office. The court shall have power, whenever any clerk of the circuit court, attorney general or circuit attorney, shall be presented or indicted, to appoint for that occasion a prosecuting attorney or clerk, as the case may require, who shall thereby be invested in relation to such presentment or indictment, with all the power of clerk, or attorney general, or circuit attorney. It shall be the duty of the court, when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

SEC. 108. If any person shall knowingly send or deliver any letter, or writing, threatening to accuse another of a crime or misdemeanor, or of exposing and publishing

Maintenance,  
definition

Punishment

Proviso

Extortion, de-  
finition of, by  
officers

Malfeasance  
in office

Punishment

May extend  
to removal

Court to give  
notice of such  
removal

Threatening  
letters

## Punishment

any of his or her infirmities or failings, with intent to extort money, goods, chattels or other valuable thing, or threatening to maim, wound, kill or murder, or to burn or destroy, his or her house or other property, or to accuse another of a crime or misdemeanor, or expose and publish any of his or her infirmities or failings, though no money, goods, chattels, or valuable thing, be demanded, such person so offending, shall on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding six months.

## TENTH DIVISION.

## OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

## Disturber of the peace

SEC. 109. If any person or persons shall at late and unusual hours of the night time, maliciously or wilfully disturb the peace or quiet of any neighborhood or family, by loud or unusual noises, or by tumultuous and offensive carriage, threatening, traducing, quarrelling, challenging to fight or fighting, every person thereof convicted, shall be fined in a sum not exceeding fifty dollars, or imprisoned not exceeding two months.

## Punishment

SEC. 110. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do, by a judge, justice, sheriff, constable, or other public officer, persons so offending, shall, on conviction, severally be fined in a sum not exceeding fifty dollars, or imprisoned for a term not exceeding one month.

## Affrays

SEC. 111. If two or more persons shall, by agreement fight in a public place, to the terror of the citizens of this state, the persons so offending shall be deemed guilty of an affray.

## Biotics

SEC. 112. If two or more persons shall assemble together, to do an unlawful act, and separate without doing or advancing towards it, such persons shall be guilty of an unlawful assemblage, and upon conviction, be severally fined in a sum not exceeding fifty dollars, or imprisoned not exceeding three months.

## Routs

SEC. 113. If two or more persons shall meet to do an unlawful act upon a common cause of quarrel, and make advances towards it, they shall be deemed guilty of a rout, and upon conviction, be severally fined in a sum not exceeding seventy dollars, or imprisoned not exceeding four months.

## Punishment

SEC. 114. If two or more persons actually do an unlawful act, with force or violence, against the person or

property of another, either with or without a common cause of quarrel, or even do a lawful act in a violent and tumultuous manner; the person so offending, shall be deemed guilty of a riot, and on conviction, shall severally be fined, not exceeding two hundred dollars, or imprisoned, not exceeding six months.

SEC. 115. If any judge, justice, sheriff, or other officer, bound to preserve the public peace, shall have knowledge of an intention, on the part of any two persons, to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer, on conviction, shall be fined not exceeding one hundred dollars.

SEC. 116. If any person or persons, shall, in any newspaper, or hand bill, written or printed, publish or proclaim, any other person or persons, as a coward or cowards, or use any other opprobrious and abusive language, for not accepting a challenge to fight a duel, or for not fighting a duel, such person or persons so offending, shall on conviction, be fined in a sum not exceeding five hundred dollars, or imprisoned for a term not exceeding six months. The publisher or printer of any newspaper, hand bill, or other publication, shall be summoned as a witness, and be required to testify against the writer or writers of such publication or hand bill; and if such printer or printers, shall refuse to testify in relation to the premises, either before the grand or petit jury, he or they shall be deemed guilty of a flagrant contempt of the court, and may be punished by fine or imprisonment: *Provided however,* That the testimony given by any such witness, shall in no case be used in any prosecution against such witness.

SEC. 117. A libel is a malicious defamation, expressed either by printing or writing, or by signs or pictures or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, virtue, integrity, or reputation, or publish the natural defects of one who is alive, and thereby expose him or her to public hatred, contempt, or ridicule. Every person, whether writer, printer or publisher, convicted of this offence, shall be fined in a sum not exceeding five hundred dollars, or imprisoned, for a term not exceeding one year. In all prosecutions for a libel, the truth thereof, may be given in evidence in justification, except libels tending to blacken the memory of the dead, or expose the natural defects of the living.

property of another, either with or without a common cause of quarrel, or even do a lawful act in a violent and tumultuous manner; the person so offending, shall be deemed guilty of a riot, and on conviction, shall severally be fined, not exceeding two hundred dollars, or imprisoned, not exceeding six months.

SEC. 115. If any judge, justice, sheriff, or other officer, bound to preserve the public peace, shall have knowledge of an intention, on the part of any two persons, to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer, on conviction, shall be fined not exceeding one hundred dollars.

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## ELEVENTH DIVISION.

## OFFENCES AGAINST THE PUBLIC MORALITY, HEALTH AND POLICE.

Bigamy,  
definition

Punishment

Five years  
absence, not  
to extend to  
where the  
parties are  
divorcedSingle per-  
sons marrying  
the wife or  
husband of an  
otherAdultery and  
fornication  
how proved  
and punished

Proviso

SEC. 118. *Bigamy*, consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons, within this state, being married, or who shall hereafter marry, do, at any time, marry any person or persons, the former husband or wife being alive, the person so offending, shall, on conviction, be fined not exceeding one thousand dollars, and imprisoned not exceeding two years. And where such second marriage shall have taken place without this state, cohabitation, after such second marriage in this state, shall be deemed the commission of the crime of bigamy, and the trial in such case, may take place in the county where such cohabitation shall have occurred: *Provided*, That nothing herein contained, shall extend to any person or persons, whose husband or wife shall have been continually remaining out of this state, for the space of five years together, prior to the said second marriage, and he or she, not knowing such husband or wife to be living within that time: *Provided also*, That nothing herein contained, shall extend to any person that is, or shall be at the time of such marriage, divorced by lawful authority, from the bonds of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

SEC. 119. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another person, such man or woman shall, on conviction, be fined not more than five hundred dollars, or imprisoned not more than one year.

SEC. 120. Any man and woman, who shall live together in an open state of adultery or fornication, or adultery and fornication, (which shall be sufficiently established by circumstances, which raise the presumption of cohabitation and unlawful intimacy;) every such man and woman shall be indicted severally, and on conviction shall be severally fined, not exceeding two hundred dollars, or imprisoned not exceeding six months; and for a second offence, they shall severally be punished twice as much as the former punishment; and for the third offence treble, and thus increasing the punishment for each succeeding offence:— *Provided however*, It shall, at any time, be in the power of the parties, so offending, to prevent or suspend the prosecution, by their intermarriage, if such marriage can

be legally solemnized, and upon the payment of the costs of such prosecution.

SEC. 121. If any person above the age of eighteen years, shall unlawfully take, or convey away, or shall cause to be taken or conveyed away, any female, unmarried, being within the age of eighteen years, out of or from the possession, and against the will of the father or mother of such female; or out of or from the possession, and against the will of such person or persons as then shall have, or by any lawful way or means hath the keeping, education or governance of any such female, and being thereof convicted, shall be punished by fine not exceeding one thousand dollars, and imprisonment not exceeding twelve months.

SEC. 122. If any person, or persons shall hereafter bring, or cause to be brought, or imported into this state for sale, or shall sell, or offer to sell any pack or packs of playing cards, or any dice, billiard table, billiard balls, or any other device or thing invented or made for the purpose of being used, or any obscene book, pamphlet or print, every such person shall, on conviction, be fined not less than twenty-five, nor exceeding fifty dollars.

SEC. 123. If any person shall be guilty of open lewdness, or any notorious act of public indecency, tending to debauch the public morals, or shall keep open any tippling house on the sabbath day or night, or shall maintain and keep a lewd house or place, for the practice of fornication, or shall keep a common, ill governed and disorderly house, to the encouragement of idleness, gaming, drinking or other misbehavior, every such person shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

SEC. 124. If any person shall, by himself, herself, servant, or other agent, for his or her gain or profit, keep, have, exercise or maintain a common gaming house, table or room, or in any house or place, occupied by him or her, procure or permit any persons to frequent, or come together to play for money or other valuable thing, at any game, every offender on conviction, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

SEC. 125. If any person or persons shall play for money, or other valuable thing, at any game with cards, dice, checks, or at billiards, or with any other instrument, article or articles, thing or things whatsoever, which may be used for the purpose of playing or betting upon, or winning or losing money, or any other thing or things, article or articles of value, or shall bet on any game others may be playing, every person so offending, shall be fined not less than twenty-five, nor exceeding one hundred dollars.

Abduction of females under eighteen years

Punishment

Gaming

Cards, &c. forbidden to be sold

Punishment

Lewdness

Brothels forbidden

Illgoverned houses

Punishment

Gaming houses

Punishment

Playing at cards, &c.

By bets

Punishment

Tavern keepers not to allow gaming

SEC. 126. Every tavern keeper, who shall suffer or permit any game or games prohibited, or intended to be prohibited by this act, to be played in his tavern, or in any out house appendant thereto, shall, on conviction, be fined not exceeding one hundred dollars, and shall forfeit his tavern license, and shall not be again licensed for one year from such conviction. It shall be the duty of all the justices of the peace, sheriffs, constables, coroners, and grand jurors, now in office, or hereafter to be appointed, to take notice, and give information to the proper authorities of all such offences as may be committed in their respective counties, contrary to the provisions of this act, whenever the same may in any wise come under their immediate observation; and the circuit attorneys of the several circuit courts, shall respectively, at each and every term of any such court, give the 124th, 125th, 126th, 127th and 12th sections of this act in special charge to the grand juries respectively. And if any officer whose duty it is made to execute the provisions of this act, shall neglect to enforce its provisions upon view or complaint as aforesaid, such officer, upon conviction thereof, shall be fined in the sum of one hundred dollars, and shall moreover be suspended from office for one year.

Sections 124, 125, 127, and 128, to be given in charge to grand jurors

Officers omitting this duty

Punishment

Selling spirituous liquors, without license

Selling to slaves and servants

Obstructing roads or highways

Nuisance

SEC. 127. Every person not having a legal license to keep a tavern, who shall barter, exchange or sell any wine, rum, brandy, gin, whiskey or other vinous, spiritous or mixed liquors to any person or persons, by a less quantity than one quart, shall on conviction, be fined for every offence, ten dollars.

SEC. 128. Every tavern keeper, or other retailer of spiritous liquors, who shall sell, barter or exchange any wine, rum, gin, brandy, whiskey, or other spiritous liquors, to any black or mulatto servant or slave, without the consent of the master or mistress of such servant or slave, shall, on conviction, be fined for each offence, ten dollars.

SEC. 129. If any person shall obstruct or injure or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any town or village, or any public bridge, causeway, public river, or other stream declared navigable by law; or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass; or shall erect or establish any offensive trade, manufacture or business, or continue the same, after it has been erected or established to the common disturbance, annoyance, nuisance or detriment of the county, town, village, or neighborhood where the same may be erected or established; or shall in any wise obstruct or pollute any water course, lake, pond, marsh, or common

sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, village or neighborhood thereabouts; every person so offending shall, upon conviction thereof, be fined not exceeding one hundred dollars; and every such nuisance may, by order of the circuit court before whom the conviction shall take place, be removed and abated by the sheriff of the proper county; and any inquest and judgment thereon had, under the provisions of any law authorizing a writ of *ad quod damnum*, shall be no bar to prosecution under this section.

SEC. 130. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious and adulterated drink or liquors, every person so offending, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding three months.

SEC. 131. If any person, number of persons, or corporation in this state, without special leave from the general assembly, shall emit and utter any bill of credit, or make, sign, draw or endorse any bond, promissory note or writing, bill of exchange or order to be used as a general currency or medium of trade, as, and in lieu of money, or other currency, every such person or persons or members of such corporation, assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding three hundred dollars, or be imprisoned not exceeding one year.

SEC. 132. If any person shall intentionally deface, obliterate, tear down, or destroy in part or whole, any copy or transcript, or extract of, or from any law of the United States or of this state, or any proclamation, publication, advertisement or notification, set up at any place in this state by authority of any law of the United States or of this state, or by order of any court, such person shall, on conviction, be fined in a sum not exceeding fifty dollars, nor less than five dollars, or imprisoned for a term not exceeding one month: *Provided*, that this section shall not be construed to extend to the defacing, obliterating, tearing down, or destroying any law, proclamation, publication, advertisement or notification, after the time for which the same was by law to remain set up, shall have expired.

SEC. 133. Every person wandering or strolling about, able to work or otherwise to support himself, in a respectable way, or leading an idle, immoral and profligate course of life, without the visible means of supporting himself, shall be arrested by a warrant to be issued by any justice of the peace; and if, on his examination, and the examina-

Punishment

Nuisances to be abated

Ad quod damnum no bar

Selling unwholesome provisions, &amp;c

Private bills to be used as money, prohibited

Punishment for circulating such

Defacing notices

Punishment; Proviso

Vagrants

How proceeded against

May be im-  
prisoned

Rogues

Who are

Punishment

Posse Comi-  
tatus

Refusing to  
join and aid  
in

Punishment

Disintering  
the dead

tion of witnesses, said justice shall adjudge the said suspicious person to be a vagrant, he shall be bound in a recognizance with sufficient security for his good behavior, and future industry for one year; and upon his failure or refusal to give such security, he shall be committed and indicted as a vagrant, and on conviction, shall be imprisoned not exceeding six months.

SEC. 134. If any person shall be apprehended, having upon him or her, any pick-lock, key, crow, bit or other implement or tool, with intent feloniously to break and enter into any dwelling house, ware house, store, shop, stable or other building containing valuable property; or shall have upon him any pistol, hanger, dirk, bludgeon, or other offensive weapon, with intent feloniously to assault any person; or shall be found in any of the aforesaid buildings with intent to steal any goods or chattels, every such person, upon conviction, shall be deemed a vagabond and rogue, and be fined not exceeding five hundred dollars, and imprisoned not exceeding one year.

SEC. 135. Every male person above the age of eighteen years, who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons, against whom there may have issued any civil or criminal process; or by neglecting or refusing to aid and assist, in retaking any person or persons, who, after having been arrested or confined may have escaped from such arrest or imprisonment; or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by any sheriff, coroner, constable, judge or justice, or other officer concerned in the administration of justice, shall, upon conviction, be fined not less than ten dollars, nor more than fifty dollars.

SEC. 136. If any person or persons shall open the graves or tombs, where the body or bodies of any deceased person or persons shall have been deposited, and shall remove the body or bodies or remains of any such deceased person or persons from the grave or place of sepulture, for the purpose of dissection, or any other surgical or anatomical experiment, or for any other purpose, without the knowledge and consent of the near relations of the deceased, or shall in any way aid, assist, counsel or procure the same to be done, or shall aid or assist in any surgical or anatomical experiment therewith, or dissection thereof, knowing such body or bodies to have been so taken or removed from the place or places of their sepulture as aforesaid, every such person or persons so offending, and being

thereof convicted, shall be fined not less than one hundred, <sup>Punishment</sup> nor more than five hundred dollars: *Provided* that this section shall not be construed to extend to the dissection of any criminal, where the same shall be directed to be delivered up for that purpose, by competent authority: *and provided* <sup>Proviso</sup> *also*, that this section shall not be construed to prevent any <sup>Further pro-</sup> <sup>viso</sup> person or persons from removing the body or bodies of their deceased relations, or intimate friends, to any other place of sepulture that he or she may think proper.

SEC. 137. If any person, being an elector, shall vote <sup>Voting twice</sup> more than once at any election, which may hereafter be held by virtue of any of the laws of this state, he shall, upon conviction thereof, be fined in any sum not exceeding <sup>Punishment</sup> one hundred dollars.

SEC. 138. If any person shall by bribery, menace, treating or other corrupt means or device whatsoever, either <sup>Using corrupt</sup> <sup>means in elec-</sup> directly or indirectly attempt to influence any elector of this state in giving his vote; or shall deter or attempt to <sup>tions</sup> deter him from giving the same, or if any elector shall receive any bribe for giving his vote at any election, every person so offending, being thereof convicted, shall be fined not exceeding five hundred dollars, and shall thereafter be <sup>Punishment</sup> disqualified from voting at any election in this state for five years.

## TWELFTH DIVISION.

### OFFENCES COMMITTED BY CHEATS, SWINDLERS AND OTHER FRAUDULENT PERSONS.

SEC. 139. All and every person, who shall be a party to any fraudulent conveyance of any land, tenements or hereditaments, goods or chattels, or of any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract or conveyance, had, made, or contrived, with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or who being parties as aforesaid, at any time, shall wittingly and willingly, put in use, avow, maintain, justify or defend the same, or any of them, as true, and done, had or made in good faith, or upon good consideration; or shall sell, alien or assign, any of the lands, tenements, hereditaments, goods, chattels or other things before mentioned, to him, her or them, conveyed as aforesaid, or any part thereof, he, she or they so offending shall, on conviction, be fined not exceeding one thousand dollars.

SEC. 140. If any person, by false representations of his

**Obtaining credit by false pretences** **own respectability, wealth or mercantile correspondence, and connexions, shall obtain a credit, and thereby defraud any person or persons of money, goods, chattels, or any valuable thing; or if any person shall cause or procure others to report falsely of his honesty, wealth or mercantile character, and by thus imposing on any person or persons, obtain credit and thereby fraudulently get into possession of goods, wares or merchandize, or any valuable thing, every such offender shall be deemed a *swindler*, and on conviction shall be sentenced to restore the property so fraudulently obtained, if it can be done, and be fined not exceeding five hundred dollars, and imprisoned not exceeding six months.**

**Swindling**

**Punishment**

**Cheats**

**Who are**

**Punishment**

**Common cheats**

**Who are**

**False weights**

**Punishment**

**SEC. 141.** If any person or persons, knowingly and designedly, by any false pretence or pretences, shall obtain from any other person or persons, any chose in action, money, goods, wares, chattels, effects, or other valuable thing whatever, with intent to cheat or defraud such person or persons of the same; every person so offending shall be deemed a *cheat*, and on conviction, shall be sentenced to restore the property so fraudulently obtained, if it can be done, and be fined not exceeding one thousand dollars, and imprisoned not exceeding one year.

**SEC. 142.** If any person or persons shall, by fraud or shift, circumvention, deceit or unlawful trick or device, or ill practice whatsoever, in playing at cards, dice or any game or games, or in, or by bearing a share or part in the stakes, wagers or adventures, or in, or by betting on the side or hand of such as do, or shall play, obtain or acquire to him or themselves, or to any other or others, any money, or other valuable thing or things whatsoever, such person so offending, shall be deemed a *common cheat*, and on conviction, shall be sentenced to restore the money or other thing so unlawfully acquired, if it can be done, and fined not exceeding five hundred dollars, and imprisoned not exceeding six months.

**SEC. 143.** If any person shall knowingly sell by false weights or measures, he or she shall be deemed a *common cheat*, and on conviction shall be fined not exceeding two hundred dollars, and imprisoned not exceeding three months.

### THIRTEENTH DIVISION.

#### FRAUDULENT AND MALICIOUS MISCHIEF.

**Injuries to bridges**

**SEC. 144.** If any person shall wilfully or maliciously cut down, break down, level, demolish, or otherwise des-

troy, or damage any bridge, embankment, or mill dam; Mill dams or break or destroy the windows or doors of any dwelling Dwelling house, or other house or building, or shall set fire to, or burn or destroy, or procure or cause to be burnt or destroyed, any barrack, cock, crib, rick or stack of hay, corn, wheat, rye, oats, barley or grain of any kind; or shall cut down, or girdle, or destroy any fruit tree, or shade tree; or shall pull down or destroy any gate, post, railing or fence; or shall pull down, burn or destroy any piles of wood, Gates and board, plank or other lumber; or shall overturn any cart, Fences wagon, or other carriage, or shall run them into ponds, Wagons sloughs, holes or other places; or shall cut loose, or set adrift any canoe, ferry flat, skiff, boat or other vessel, for Water crafts mischief; or shall unlawfully, wantonly, wilfully or maliciously, kill, wound, disfigure, or destroy any horse, mare, Injuries to animals colt or gelding; or any bull, ox, steer, bullock, cow, heifer or calf; or any sheep or lamb; or any hog or pig; or any other useful animal, being the property of another; every person so offending shall, on conviction, be fined not exceeding one hundred dollars, or be imprisoned not exceeding three months, or both.

SEC. 145. If any person or persons shall wilfully and intentionally break down, pull down, or otherwise destroy Destroying jails or injure, in the whole or in part, any public jail or other lawful place of confinement, every person so offending shall, upon conviction, be fined in any sum not exceeding five thousand dollars, nor less than the value of such jail or other place of confinement so burned or otherwise destroyed, or of such injury as may have been done thereto by such unlawful act.

SEC. 146. If any person or persons shall, at any time hereafter, wilfully and intentionally, or negligently and carelessly, set on fire, or cause to be set on fire, any woods, prairies or other grounds whatsoever, within the inhabited parts of this state, every such person so offending, and being thereof convicted, shall be fined in any sum not less than five nor more than one hundred dollars: *Provided*, that this section shall not extend to any person who shall set on fire the woods or prairies immediately adjoining his or her farm, plantation or enclosure, for the necessary preservation thereof from accident by fire, at any time between the first day of March and the last day of November, by giving to his or her neighbors two days' notice of such intention: *Provided also*, that this section shall not be construed to take away any civil remedy which any person may be entitled to for any injury which may be done Punishment, or received in consequence of such firing.

## FOURTEENTH DIVISION.

OFFENCES RELATIVE TO SLAVES, INDENTURED SERVANTS  
AND APPRENTICES.

**Harboring slaves** SEC. 147. If any person or persons shall harbor or secrete any negro, mulatto, or person of color, the same being a slave or servant owing service or labor to any other person or persons, whether they be residents of this state or of any other state, territory, or district within the limits and under the jurisdiction of the United States; or shall in any wise hinder or prevent the lawful owner or owners of such slaves or servants from retaking or possessing them in a lawful manner; every such person so offending, shall be deemed guilty of a misdemeanor, and fined not exceeding five hundred dollars, or imprisoned not exceeding six months.

**Punishment****Removing indentured servants out of this state**

**Forfeits the right to service** SEC. 148. If any person or persons entitled to the labor or service of any negro, mulatto or colored person, by indenture or other contract, or registry, made or entered into, under the laws of the late territory of Indiana or of Illinois, having a right to hold such person of color, in temporary servitude, by virtue of those laws and the constitution of this state, shall hire out, or send any such negro, mulatto, or colored person, or any of his or her children, to live or reside in any other state, territory or country; or shall cause or procure, or suffer it to be done, or shall sell or otherwise dispose of any such person of color, or the children of such, for the purposes aforesaid, to any citizen or resident of another state, territory or country, or shall suffer such person or persons of color to be removed into any other state, territory or country, before the expiration of his or her term of service; every person so offending, and all purchasers of such colored persons so sold, or removed, shall forfeit and lose all claim, right and title to the service of such person of color, and shall, on conviction for each offence, be fined not exceeding five hundred dollars, one half to be applied to the use of the person injured and the other half to the use of the country.

**Punishment****Selling spirits to minors and apprentices, &c or harboring after caution**

SEC. 149. If any keeper of a public house, or retailer of spirituous liquors, shall receive, harbor, entertain, or trust any minor or apprentice, within the age of twenty-one years, or any servant or slave, knowing them to be such, after having been cautioned or warned to the contrary by the parent, guardian, master or mistress of such minor, apprentice, servant or slave, in the presence of one or more credible witnesses: every such keeper of a public

house, or retailer of spirituous liquors as aforesaid, so offending shall, upon conviction thereof, be fined in the sum of twelve dollars, and shall moreover forfeit his or her license.

Punishment

## FIFTEENTH DIVISION.

## CONSTRUCTION OF THIS ACT, AND DUTY OF COURTS.

SEC. 150. Every indictment or accusation of the grand jury, shall be deemed sufficiently technical and correct which states the offence in the terms and language of this code, or so plainly that the nature of the offence charged, may be easily understood by the jury. The commencement of the indictment shall be in substance as follows:

of the term of the circuit court in the year of our Lord

*State of Illinois, } ss.  
County. }*

The grand jurors chosen, selected and sworn in and for the county of , in the name, and by the authority of the people of the state of Illinois, upon their oaths present, &c. (here state the offence, and time and place of committing the same, with reasonable certainty.)

SEC. 151. All exceptions, which go merely to the form of an indictment, shall be made before trial, and no motion in arrest of judgment, or writ of error shall be sustained for any matter not affecting the real merits of the offence charged in such indictment. No indictment shall be quashed for want of the words, "*with force and arms,*" or of the occupation or place of residence of the accused, nor by reason of the disqualification of any grand juror, or grand jurors.

SEC. 152. Nothing in this act contained shall be so construed as to prevent the party or parties injured from having and maintaining a civil action for all damages and losses that he, she or they may have sustained in consequence of the commission of any criminal offence herein punished; and no court shall allow or entertain the plea that the private injury is merged in the crime, or in any manner affected thereby: *Provided however,* the record of conviction shall not be used as evidence in any civil action brought on any forged writing, or to recover the damages and losses sustained by the commission of any such criminal offence.

SEC. 153. It shall, and it is hereby declared to be, the duty of the judges of the supreme and circuit courts, to

Practice in  
criminal cases

Indictment

What suffi-  
cientExceptions to  
form when  
madeArrest of  
judgmentMay have civ-  
il actionPrivate injury  
not merged  
in the crime  
ProvisoJudges to re-  
port defects  
in this code

make a special report biennially, to the legislature, of all such defects, omissions or imperfections in this code, as experience may suggest.

**Death to be by hanging**

SEC. 154. The manner of inflicting the punishment of death, shall be by hanging the person convicted, by the neck until death, at such time as the court shall direct, not less than fifteen, nor more than twenty-five days from the time sentence is pronounced, unless for good cause the court or governor may prolong the time.

**Body of convict may be delivered to surgeons**

SEC. 155. The court may order, on the application of any respectable surgeon or surgeons, that the body of the convict shall after death, be delivered to such surgeon or surgeons, for dissection.

**This act to extend to females Except whipping, &c.**

SEC. 156. This act shall extend to females committing any of the offences made punishable by this act, although they may not be expressly named, but no white female shall be sentenced to be whipped, or to stand in the pillory.

**Offences herein defined to be prosecuted under this act**

**Proviso**

SEC. 157. All offences herein defined, shall be prosecuted and punished as by this act is prescribed, and not otherwise; and all other offences may be punished by fine and imprisonment, in the discretion of the court: *Provided*, The fine shall in no case exceed one hundred dollars, and the imprisonment six months.

**Discretionary punishment**

SEC. 158. Whenever the punishment for any crime or misdemeanor, is discretionary as to the extent or amount thereof, the court shall determine and affix the same, whether the punishment consist of corporal punishment, imprisonment or fine.

**Fines imposed, how paid**

**Proviso**

**Benefit of clergy, &c. abolished**

**Offenders committed until fine and costs be paid**

**Infamy Who are infamous**

SEC. 159. All fines imposed by virtue of any of the laws of this state for the punishment of crimes and misdemeanors shall, when collected, be paid into the treasury of the county where the offence shall be tried, for the use of such county, unless otherwise expressly directed: *Provided however*, That nothing in this section contained, shall be so construed as to found or constitute, a cause of challenge or objection to any grand or petit juror.

SEC. 160. The benefit of clergy, appeals of felony, and trials by battle, shall be and are hereby forever abolished.

SEC. 161. The court shall have power in all cases of conviction under this act, when any fine is inflicted, to order as part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid, or otherwise legally discharged.

SEC. 162. Each and every person, who may hereafter be convicted of the crime of rape, kidnapping, wilful and corrupt perjury, or subornation of perjury, arson, burgla-

ry, robbery, sodomy or the crime against nature, larceny, forgery, counterfeiting or bigamy, shall be deemed infamous, and shall for ever thereafter, be rendered incapable of holding any office of honor, trust or profit, of voting at any election, of serving as a juror, and of giving testimony within this state.

### SIXTEENTH DIVISION.

#### OF PROCESS, INDICTMENT, ARRAIGNMENT, TRIAL, JUDGMENT, EXECUTION, AND WRIT OF ERROR.

SEC. 163. It shall be the duty of the circuit court, when any indictment shall be found as a true bill, to make an order fixing the amount of bail to each offence, bailable by law, to be endorsed on the process by the clerk; and the sheriff, coroner, or other officer, who shall arrest the indicted person or persons, shall let such indicted person or persons to bail, upon his, her or their entering into a recognizance, with one or more sufficient securities, in the sum or sums specified on said process: Which recognizance, shall be made to the people of the state, conditioned for the appearance of the indicted person or persons, on the first day of the next circuit court, to be holden in and for such county, to answer the said indictment, and not depart the court without leave; which recognizance shall be signed by the persons entering into the same, and certified by the officer taking it. Every recognizance, so taken, is hereby declared to be valid and binding, and shall not be set aside, or adjudged insufficient for want of form.

Duty of the court to fix amount of bail

Recognizance How taken

SEC. 164. It shall be the duty of the clerks of the circuit courts of each county of this state, to issue process of capias, for the apprehension of all persons indicted in said courts, respectively, to be directed to the sheriff, coroner, and constables of the county where such indictment shall be found, or to any county where such indicted person or persons shall then be; and it shall be the duty of the sheriff, or in case of his absence or inability, of the coroner, or some one of the constables of the county, to which said capias is directed, to arrest the person or persons therein named; and to let him or them to bail where the offence is bailable; or if the offence be not bailable, or not sufficient bail be offered, then the officer making the arrest, shall bring his, her, or their bodies, to the jail of the county where said capias is returnable, and deliver such accused person or persons, together with the capias, to the keeper of the jail, there to remain until discharged by due course of law. It shall also be the duty of any

Clerks duty

And sheriff's

When to let to bail, and when to commit

Recognizance  
when to be  
returned

Officer pas-  
sing through  
a county with  
prisoner may  
lodge the pris-  
oner in jail

Duty of clerks  
to issue sub-  
pœnas

Witnesses  
refusing to at-  
tend

Attachments  
to different  
counties

Venire in  
criminal cases

Talesmen

officer who shall take any recognizance, in pursuance of this section, to return the same to the clerk, by the first day of the court to which it may be returnable. It shall be lawful for any officer who has the custody of any prisoner or prisoners, by virtue of this section, to pass through any counties, which lie in his route, between the place of arrest and the county to which he is taking such prisoner or prisoners; and to lodge or deposite said prisoner or prisoners in any jail, on his route for safe custody for one night or more, as occasion may require; and it is hereby made the duty of the county commissioners' court of the county, where such indictment shall be found to pay to the officer who shall bring any offender or offenders from another county, his reasonable charges for such service: *Provided*, That nothing contained in this or the preceding section, shall prevent a *capias* from being issued, without such endorsement returnable instanter; which capias shall authorize and require the accused to be arrested and immediately brought into court, when he or she shall be, either committed, bailed or tried at the term at which the indictment shall be found.

SEC. 165. It shall be the duty of the clerks of the circuit court, to issue subpœnas, either on the part of the people, or of the accused in any indictment, directed as in the preceding section, to any county in this state. And every witness who shall be duly subpœneed, and shall neglect or refuse to attend any circuit court pursuant to the requisitions of such subpœna, shall be proceeded against, and punished for contempt of the court. And attachments against witnesses who live in a different county from that where such subpœna is returnable, may be served in the same manner as capiases are directed to be served out of the county, from which they issue in the preceding section.

SEC. 166. It shall not be necessary to issue a venire in any criminal case; and in all criminal cases, where the panel of jurors shall be exhausted, by challenges or otherwise, and whether any juror has been elected and sworn or not, it shall be competent for the court to order on their minutes a *tales* for any number of jurors not exceeding twenty-four, returnable instanter, out of which persons so ordered to be summoned, it shall be lawful to empanel a jury for the trial of any criminal case; but should the *tales* ordered, be insufficient, by reason of challenges or otherwise, to form an impartial jury, the court may from time to time make further orders on their minutes for additional *talesmen*, returnable instanter, until a full jury shall be obtained.

SEC. 167. No bill of indictment for false imprisonment <sup>Prosecutions</sup> or wilful and malicious mischief, shall be found 'a true bill' <sup>to be endorsed on indictment</sup> by any grand jury, unless a prosecutor is endorsed there-<sup>ment</sup> on, by the foreman of the grand jury, with the consent of the prosecutor, except the same shall be found upon the information and knowledge of two or more of the grand jury, or upon the information of some public officer, in the necessary discharge of his duty; in which case, it shall be stated at the end of the indictment, how the same is found; and then no prosecutor shall be required; but in cases where a prosecutor is endorsed on the indictment, and the defendant shall be acquitted on trial; the petit jury <sup>Exception</sup> acquitting such defendant, shall find in addition to the verdict of "not guilty" whether the prosecutor had acted maliciously by instigating the prosecution or not: and whenever the petit jury shall return with their verdict of "not guilty," that the prosecutor had acted maliciously in <sup>Verdict</sup> <sup>what to find</sup> the premises, the court shall enter judgment for the costs against the prosecutor, including a fee of three dollars to the attorney general or circuit attorney, and award execution for the same, as is done in civil cases: *Provided*, That nothing herein contained, shall render the prosecutor incompetent to be a witness, either before a grand or petit jury.

SEC. 168. Every person charged with treason, murder, or other felonious crime, shall be furnished, previous to his arraignment, with a copy of the indictment, and a list of the jurors and witnesses. In all other cases, he or she shall, at his or her request, or the request of his or her counsel be furnished with a copy of the indictment and a list of the jurors and witnesses. <sup>Trials for treason, murder, &c accused to be furnished with copy of indictment &c.</sup>

SEC. 169. Upon the arraignment of a prisoner, it shall <sup>Arraignment</sup> be sufficient without complying with any other form to declare orally by himself or herself, or his or her counsel, that he or she is not guilty, which declaration or plea, shall be immediately entered upon the minutes of the court by the clerk; and the mention of the arraignment and such plea, shall constitute the issue between the people of this state and the prisoner; and if the clerk should neglect to insert in the minutes, the said arraignment and plea, it may and shall be done, at any time by order of the court; and then the error or mistake shall be cured.

SEC. 170. In all cases where the party indicted, shall, on being arraigned, obstinately stand mute, or refuse to plead, standing mute, or refusal to plead, shall be adjudged and taken to be a denial of the facts charged in the indictment, and the court shall order the plea of not guilty to be entered on the minutes, and the trial, judgment and <sup>Standing mute effect of</sup>

**execution**, shall proceed in the same manner as it would have done if the party had pleaded not guilty.

**Plea, guilty  
not to be en-  
tered until  
explained**

SEC. 171. In all cases where the party indicted, shall plead guilty, such plea shall not be entered until the court shall have fully explained to the accused the consequences of entering such plea: after which, if the party indicted, persist in pleading guilty, such plea shall be received and recorded, and the court shall proceed to render judgment and execution thereon, as if he or she had been found guilty by a jury. In all cases where the court possess any discretion, as to the extent of the punishment, it shall be the duty of the court to examine witnesses as to the aggravation or mitigation of the offence.

**Witnesses to  
be examined  
in aggravation  
or mitigation**

**Challenge in  
capital cases  
to 20 jurors  
In others to  
ten & to six**

**By the people  
to one half as  
many  
Jury  
Mediate  
linguae not  
allowed**

**Offences com-  
mitted on  
count lines  
where tried**

**Grand juries  
evidence be-  
fore**

**Foreman to  
swear witness  
ses**

**Trials**

SEC. 172. Every person arraigned for any crime, punishable with death, shall be admitted on his trial to a peremptory challenge of twenty jurors, and no more; and every person arraigned for any offence that may be punished by imprisonment, for a term exceeding eighteen months, shall be admitted to a peremptory challenge of ten jurors; and in all other criminal trials the defendant shall be allowed a peremptory challenge of six jurors. The attorney prosecuting on behalf of the people, shall be admitted to a peremptory challenge of one half the number of jurors that the accused is entitled to.

SEC. 173. In no case shall the right to a trial by a jury, *de medietate linguae* be allowed in criminal prosecutions.

SEC. 174. Where an offence shall be committed, on a county line, the trial may be in either county, divided by such line; and when any offence shall be committed against the person of another, and the person committing the offence, shall be in one county and the person receiving the injury shall be in another county, the trial may be had in either of said counties.

SEC. 175. In all complaints exhibited before the grand jury of any county, they shall hear the witnesses, on behalf of the people only; and may find an indictment on the oath of one witness only, or upon the information of two of their own body, except in cases of treason or perjury, where at least two witnesses to the same fact shall be necessary, and in finding a bill of indictment, at least sixteen of the grand jury shall be present, and at least twelve of them shall agree to the finding. The foreman of the grand jury may swear or affirm all witnesses that may come before the jury.

SEC. 176. All trials for criminal offences, shall be conducted according to the course of the common law, except where this act points out a different mode; and the rules of evidence of the common law shall also, unless

changed by this act, be binding upon all courts and juries in criminal cases. Juries shall in all cases be judges of the law and the fact.

SEC. 177. When the jury shall retire to consider of their verdict, in any criminal case, a constable or other officer, shall be sworn or affirmed to attend the jury to some private and convenient place, and to the best of his ability keep them together without meat or drink, water excepted, unless by leave of the court, until they shall have agreed on their verdict; that he will not speak to them himself, without like leave, except to ask them if they have agreed on their verdict, nor suffer others to speak to them; and that when they have agreed on their verdict, he will return them into court: *Provided however*, that in cases of misdemeanor only, if the prosecutor for the people and the person on trial, by himself or counsel shall agree, which agreement shall be entered upon the minutes of the court, to dispense with the attendance of an officer upon the jury, or that the jury when they have agreed upon their verdict, may write and seal the same, and after delivering their verdict to the clerk, may then separate; it shall be lawful for the court to carry into effect any such agreement, and receive any such verdict so delivered to the clerk as the lawful verdict of any such jury.

SEC. 178. If any officer sworn to attend upon a jury, shall knowingly violate his oath or affirmation, or shall so negligently perform his duties that the jury shall separate without leave of the court, or obtain food or drink, except water, or if any person, not belonging to the jury, shall hold conversation with any of the jury; every person and officer so offending, shall be punished for a contempt of the court, by fine or imprisonment, or both, in the discretion of the court.

SEC. 179. In all cases where any person or persons shall be convicted of any of the crimes or misdemeanors specified in this act, or of any offences at common law, the court shall give judgment, that such offender or offenders so convicted, shall pay the costs of the prosecution.

SEC. 180. The property, real and personal, of every person who shall be convicted of any of the offences punished by this act, shall be bound; and a lien is hereby created on the property, both real and personal, of every such offender, from the time of his or her arrest, if he or she be arrested before indictment; if not, then from the time of finding the indictment; at least so far as will be sufficient to pay the fine and costs of prosecution. And it shall be the duty of the clerk of the circuit court, at the end of each term, to issue an execution for every fine

Juries to judge of the law and the fact

Juries to be attended by an officer

May be discharged by agreement in certain cases

Officers sworn to attend juries

their duty

Judgment for costs to be given

To be a lien from arrest

Clerk to issue execution for fines & costs

which shall have been imposed during the term, and which remains unpaid, and for all costs of conviction in criminal cases, in which execution shall be stated the day on which the arrest was made, or indictment found, as the case may be: which execution shall be delivered to the sheriff or coroner, and shall be by him levied on all estate, real and personal, which the defendant or defendants in such execution possessed, as his or her own real and personal estate, on the day mentioned in such execution; and on any property, real or personal, subsequently acquired by him or her; which property so to be levied on, shall be advertised as in civil cases, and sold for what it will bring. It shall be no objection to the selling of any property under such execution that the body is in custody for said fine and costs.

Sheriffs duty  
in such cases

Fines & costs  
may be replevied

five months

Clerk's duty

SEC. 181. It shall and may be lawful for any person or persons convicted of any criminal offence to replevy the judgment for the fine and costs, or the costs only, when no fine shall be imposed, by such convicted person or persons, with one or more good and sufficient freeholders, entering into a recognizance before the circuit court to the people of this state, for the payment of such fine and costs, or costs only, within five months from the date of the acknowledgment of such recognizance; which recognizance so taken, is hereby declared to be valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same; and upon the breach thereof, the clerk is hereby authorized to issue an execution against the goods and chattels, lands and tenements, of the persons who entered into such recognizance, in the same manner as if it had been a judgment of the court; which execution shall be collected in the same manner as is prescribed in the preceding section. *No scire facias* shall be necessary previous to issuing such execution. In all cases where the person or persons convicted as aforesaid shall replevy the fine and costs as is provided in this section, then no execution shall issue for said fine and costs as is provided in the next preceding section; and further, such person or persons, after replevying the fine and costs as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment in consequence of any conviction, unless where imprisonment is, by this act, made a part of the punishment; in that case, such convicted person or persons shall be discharged from his, her or their imprisonment, at the expiration thereof, if he, she or they have replevied the fine and costs as aforesaid.

SEC. 182. Executions for fines and costs of prosecution, and on recognizances taken in pursuance of the preceding section, may be issued into any county in this state. Execution for fines &c

SEC. 183. Whenever it shall be made satisfactorily to appear to the circuit court, after all legal means have been exhausted, that any person who is confined in jail for any fine or costs of prosecution for any criminal offence, hath no estate or means wherewith to pay such fine and costs, or costs only, it shall be the duty of the said court to discharge such person from further imprisonment for such fine and costs, which discharge shall operate as a complete release of such fine and costs: *Provided*, that nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned as part of his or her punishment. Court may discharge persons unable to pay Provided

SEC. 184. In all cases of bail for the appearance of any person or persons charged with any criminal offence, the security or securities of such person or persons, may at any time, before judgment is rendered upon *scire facias* to shew cause why execution should not issue against such security or securities, seize and surrender such person or persons charged as aforesaid to the sheriff of the county wherein the recognizance shall be taken, and it shall be the duty of such sheriff, on such surrender and the delivery to him of a certified copy of the recognizance by which such security or securities are bound, to take such person or persons so charged as aforesaid into custody, and by writing, acknowledge such surrender, and thereupon the security or securities shall be discharged from any such recognizance, upon payment of all costs occasioned thereby. Appearance bail

SEC. 185. In the trial of any person or persons for any crime or misdemeanor, it shall be the duty of the judge before whom such trial is pending, to sign and seal any bill of exception tendered to the court during the progress thereof, as in civil cases: *Provided*, the truth of the case be fairly stated in such bill of exceptions, and thereupon the said exceptions shall, by the clerk of the said court, be entered in the record of such trial, and become to all intents and purposes a part thereof. Bill of exceptions

SEC. 186. The party aggrieved by manifest and material error, appearing of record, in any capital prosecution by indictment, may be relieved by writ of error, upon complying with the following terms, to wit: the party complaining that error has been committed shall obtain a certified copy of the record from the clerk and from the judge of the circuit court, or from the person who acted as prosecuting attorney on the trial, a certificate expressive of Writ of error

Assignment  
of errors

an opinion that said record contains a full and true history of the proceedings on said trial; which record, together with an assignment of the errors relied on, for the reversal of the judgment, shall be presented to the supreme court, or to one of the justices thereof in vacation; and if after inspecting such transcript the court or justice aforesaid, shall be of opinion that there is reasonable cause for allowing a writ of error, the same shall be granted by order, endorsed on the back of said transcript. The allowance of such writ of error shall be sufficient authority to the clerk of the supreme court to issue a supersedeas to stay the execution of the sentence of death, but not the discharge of the prisoner from jail. Where any judgment, the execution whereof has been stayed by writ of error as aforesaid, shall be affirmed, the supreme court shall, by order, fix the time when the original sentence of death shall be executed, a copy of which order shall be sufficient authority to the sheriff for the execution of any prisoner therein mentioned at the time specified.

Supersedeas

Writs of error granted of course except in capital cases

SEC. 187. Writs of error in all criminal cases, not capital shall be considered as writs of right, and issue of course: but no writ of error shall be a supersedeas unless the supreme court, or one of the justices thereof in vacation, after inspecting a copy of the record certified as in the preceding section, together with an assignment of the errors relied on for a reversal of the judgment, shall be of opinion that there is reasonable cause for allowing a writ of error, then the writ shall be granted by order endorsed on the back of such record, in which case the clerk of the supreme court shall issue a supersedeas, which shall have the effect to stay execution of the sentence, but not to discharge the prisoner from custody. If the party applying for such writ of error shall at the time be in custody, under the authority of the judgment prayed to be superseded and the said court or justice shall be of opinion that the party obtaining such writ of error, ought to be bailed until the determination of such writ of error, the said supreme court, or justice, may make an order to discharge such prisoner from custody, upon the prisoner's entering into recognizance to the people of the state, before the sheriff of the county, where he or she shall be imprisoned, in such sum, and with such security as said court or justice shall prescribe: which recognizance shall be conditioned that the prisoner will appear at the next circuit court to be holden in the county where the trial of such prisoner took place, and at each subsequent term of the circuit court, on the first days thereof, until the determination of such writ of error, and that he will be present and submit

How granted in capital cases

Supersedeas

Prisoner may be bailed

How

Recognizance

to such order as the supreme court shall make in the premises, and will not, at any of the terms of said court in which he shall be bound to appear by said recognizance depart the court without leave. The recognizance so to be taken shall be returned to the next circuit court, and there entered of record; and such proceedings may be thereon had, in case of a breach of the condition of such recognizance, as shall be according to the course of the common law: *Provided however*, that in cases where corporal punishment is to be inflicted, the prisoner shall in no case be bailed upon the affirmance of any judgment brought into the supreme court by virtue of this section: the said court shall order and direct the circuit court to carry into effect the judgment of the court below. In case of affirmance, judgment shall be given for costs against the party prosecuting such writ of error, and execution shall issue thereupon from the supreme court.

Proceeding  
thereon

### SEVENTEENTH DIVISION.

#### LIMITATIONS OF INDICTMENTS AND PENAL ACTIONS.

SEC. 188. No person or persons shall be prosecuted, tried or punished for any offence denominated by the common law, felony, (treason, murder, arson, and forgery excepted) unless the indictment for the same shall be found by a grand jury, within three years next after the offence shall have been done or committed. Nor shall any person be prosecuted, tried or punished for any misdemeanor, or other indictable offence, below the grade of felony, or for any fine or forfeiture, under any penal statute, unless the indictment, information or action for the same shall be found or instituted within one year and six months from the time of committing the offence, or incurring the fine or forfeiture: *Provided*, that nothing herein contained shall extend to any person fleeing from justice; and *provided also*, that where any suit, information or indictment for any crime or misdemeanor is limited by any statute, to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute: *Provided also*, that where any indictment, information or suit shall be quashed, or the proceedings on the same set aside, or reversed on writ of error, the time during the pendency of such indictment, information or suit, so quashed, set aside or reversed, shall not be reckoned within this statute, so as to bar any new indictment, information or suit for the same offence.

Limitations of  
prosecutions

**Acts repealed** SEC. 189. The act entitled "An act respecting crimes and punishments, approved March 23, 1819;" the act entitled "An act respecting crimes and punishments," approved February 12, 1821: the act entitled "An act to more effectually prevent kidnapping, and for other purposes," approved January 17, 1825: the act entitled "An act to prevent the disinterment of the dead," approved January 3, 1825; the 6th, 7th, 8th and 9th sections of the act entitled "An act respecting free negroes, mulattos, servants and slaves," approved March 30, 1819: the act entitled "An act regulating the firing of woods, prairies and other lands," approved February 20, 1819: the act amending the last mentioned act, approved February 14, 1823: the act entitled "An act providing for the prosecution of county commissioners, sheriffs, coroners, justices of the peace, clerks of the circuit court, clerks of the county commissioners' court, recorders and constables, who may be guilty of malconduct, or palpable omission in the duties of their respective offices," approved January 19, 1821: the act entitled "An act supplementary to the act entitled an act for the prevention of vice and immorality," approved January 10, 1825: the act entitled "An act to suppress duelling," approved February 22, 1819; the 7th section of the act entitled "An act to license and regulate taverns," approved February 27, 1819: the act entitled "An act for the prevention of vice and immorality," approved January 31, 1821: the latter or penal part of the proviso to the 3d section of the act entitled "An act regulating elections," approved January 3, 1823: the 5th and 6th sections of the act entitled "An act changing the terms of the courts therein named, and regulating the practice in certain cases," approved January 26, 1826, and all acts and parts of acts coming within the purview of this act, are hereby repealed: *Provided*, that all indictments, recognizances, process and proceedings, which shall be pending when this act takes effect, under, or by virtue of any law hereby repealed, shall be proceeded on to judgment and execution in the same manner, and with the like effect as if this act had not been passed: And all crimes, misdemeanors and offences, which shall have been committed, or may be committed before this act takes effect, and which are made punishable by any of the laws hereby repealed, shall be prosecuted and punished in the same manner as if this act had not been passed.

[Approved, Jan. 30, 1827.]

## AN ACT

*To regulate the apprehension of offenders, and for other purposes.*

In force after  
the first day  
of July 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the judges of the supreme court throughout the state, the judges of the circuit courts in their respective circuits, and justices of the peace in their respective counties, shall jointly and severally be conservators of the peace, within their respective jurisdictions, as herein designated, and shall have full power to enforce, or cause to be enforced, all laws that now exist, or that shall hereafter be made, for the prevention and punishment of offences, or for the preservation and observance of the peace.* They shall have power to cause to be brought before them, or any of them, all persons who shall break the peace, and commit them to jail, or admit them to bail, as the case may require, and to cause to come before them, or any of them, all persons who shall threaten to break the peace, or shall use threats against any person within this state, concerning his or her body, or threaten to injure his or her property, or the property of any person whatever; and also all such persons as are not of good fame, and the said judge or justice of the peace, being satisfied, by the oath of one or more witnesses, of his or her bad character, or that he or she had used threats as aforesaid, shall cause such person or persons to give good security for the peace, or for their good behavior towards all the people of this state, and particularly towards the individual threatened. If any person against whom such proceedings are had, shall fail to give a recognizance with sufficient security, it shall be the duty of the judge or justice of the peace before whom he or she shall be brought, to commit such person or persons to the jail of the proper county until such security be given, or until the next term of the circuit court. Such judge or justice of the peace, shall also take recognizances for the appearance of all witnesses at such courts. All recognizances to be taken in pursuance of this section shall be returnable at the next circuit court, to be held in the proper county, where all such recognizances shall be renewed or dismissed, as the said circuit court shall, upon examination of the witnesses, deem to be just and right. And where the person or persons committed are in jail at the sitting of such circuit court, the court shall examine the witnesses, and either continue the imprisonment, bail the prisoner, or discharge him or her, as to the said court

Who are conservators of the peace

Their power

May cause offenders to be arrested and committed

And may bind them to keep the peace

Or commit to jail until court

Which may discharge or admit to bail as the case may require

shall appear to be right, having due regard to the safety of the citizens of this state.

**Due and cry  
may be raised  
for the ap-  
prehension of  
felons**

SEC. 2. When any felonious offence shall be committed, public notice thereof shall be immediately given, in all public places near where the same was committed, and fresh pursuit shall be forthwith made after every person guilty thereof, by sheriffs, coroners, constables and all other persons, who shall be by any of them commanded or summoned for that purpose: every such officer who shall not do his duty in the premises shall be punished by fine, in a sum not exceeding one hundred dollars, or imprisonment not exceeding three months.

**Suspected  
persons, how  
apprehended**

**And to en-  
quire into the  
truth of the  
charge**

SEC. 3. It shall be lawful for any of the aforesigned judges or justices of the peace, upon oath or affirmation being made before him, that any person or persons have committed any criminal offence in this state, or that a criminal offence has been committed, and that the witness or witnesses have just and reasonable grounds to suspect that such person or persons have committed the same, to issue his warrant under his hand, commanding the officer, or person, charged with the execution thereof, to arrest the person or persons so charged, and bring him, her or them before the officer issuing said warrant, or in case of his absence, before any other judge or justice of the peace, the said judge or justice of the peace, before whom any person shall be brought in pursuance of such warrant, or shall be brought without warrant, and charged with any criminal offence, before he shall commit such prisoner to jail, admit to bail, or discharge him or her from custody, shall enquire into the truth or probability of the charge exhibited against such prisoner or prisoners, by the oath of all witnesses attending; and shall upon consideration of the facts and circumstances then proved, either commit such person or persons, so charged, to jail, admit him, her or them to bail, or discharge him, her or them from custody. No justice of the peace shall admit to bail any person or persons charged with treason, murder, or any offence punishable with death: and provided, that in all cases where the charge is for sodomy, rape, arson, burglary, robbery, forgery, or counterfeiting, it shall be the duty of any justice of the peace, whenever any person or persons shall be brought before him, for the same or either of them, to associate with himself some neighboring justice of the peace previous to the examination of the witnesses, and they two shall have power to bail such prisoner or prisoners, or commit him, her or them to jail, in case no good and sufficient bail is offered, or discharge the prisoner or prisoners, according to the proof that is adduced, and the law arising

thereon. All recognizances taken in pursuance of this section shall require the accused to appear at, and on the first day of the next circuit court, or if the court be then sitting, on some day of the term, to be therein designated.

SEC. 4. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail as aforesaid, or admit him to bail, to bind by recognizance the prosecutor, and all such as do declare any thing material, to prove the offence charged, to appear before the next circuit court, on the first day thereof, or if the said court shall be then sitting, on some day to be therein designated, (and in all cases at the same time and place as the person or persons accused by said witnesses shall be bound to appear) to give evidence touching the offence so charged, and not depart the court without leave. If any person, upon being required to enter into recognizance as aforesaid, shall refuse, it shall be lawful for such judge or justice of the peace to commit him or her to jail, there to remain until he or she shall enter into such recognizance, or be otherwise discharged by due course of law.

SEC. 5. All recognizances that have any relation to criminal matters, shall be taken to the people of this state, shall be signed by the person or persons entering into the same, be certified by the judge, justice of the peace, or other officer taking the same, and delivered to the clerk of the circuit court, on or before the day mentioned therein for the appearance of the witness or accused therein bound. Recognizances taken in courts of record need not be signed or certified as aforesaid. Recognizances for assaults, batteries and affrays, shall be for the appearance of the accused before the justice of the peace taking the same, or before some other justice of the county, on the day appointed by the justice for the trial of the offender.

SEC. 6. Where any person shall be committed to jail on a criminal charge, for want of good and sufficient bail, except for treason, murder, or other offence punishable with death, or for not entering into a recognizance to appear and testify, any judge, or any two justices of the peace may take such bail or recognizance in vacation, and may discharge such prisoner from his or her imprisonment. It shall be the duty of the judge or justice committing such person to jail to endorse on the warrant of commitment, in bailable cases, in what sum bail ought to be taken.

SEC. 7. When a charge shall be exhibited upon oath before any judge or justice of the peace, against any person for a criminal offence, it shall be the duty of the judge or justice of the peace, before whom the charge shall be

The prosecut-  
or to be re-  
cognized to  
appear at  
court

R. cognizance  
how taken, &c

Persons com-  
mitted for  
want of bail

It. Mitimus, en-  
dorsement on

Warrant to  
whom direc-  
ted

made, to issue his warrant for the apprehension of the offender, directed to all sheriffs, coroners and constables within the state; and it shall be the duty of any sheriff, coroner or constable, into whose hands any such warrant shall come, to execute the same within their respective counties, and if the offender shall be found therein, to arrest and convey such offender before the judge or justice of the peace who issued the warrant, or before some other justice of the peace of the same county. When any such sheriff, coroner or constable, or other person called to the assistance of such sheriff, coroner, or constable, shall be in pursuit of any offender, having a warrant for the apprehension of such offender, and the offender shall cross the line into the adjoining county, such sheriff, coroner, constable, or other person may pursue such offender into such adjoining county and make the arrest, as if such offender had been found in the county of the officer in pursuit.

SEC. 8. Any judge or justice of the peace, issuing any such warrant, may make an order thereon, authorizing a person to be named in such warrant to execute the same, and the person named in such order may execute such warrant any where in the state, by apprehending and conveying such offender before the judge or justice issuing such warrant, or before some other justice of the same county, and all sheriffs, coroners, and constables, and others, when required in their respective counties, to be aiding and assisting in the execution of such warrant.

Warrants may be directed to any person named therein

Officers having custody of offenders

How to proceed

Warrants need not be under seal

SEC. 9. Any person or persons, officer or officers, who may have the custody of any offender or offenders, by virtue of either of the two preceding sections, may take or carry such prisoner or prisoners into any other county which may be situated on his or their way back to the county from which the said prisoner or prisoners fled, and may deposite such prisoner or prisoners in any jail on his or their route, for safe custody for one night or more, as occasion may require. Upon their arriving in the county to which the prisoner or prisoners is or are sent under the last preceding section, such officer or officers, person or persons, shall deliver such prisoner or prisoners into the custody of the sheriff or jailer, together with the warrant of the said judge or justice, which shall be a sufficient justification to the said sheriff or jailer to receive and detain such prisoner or prisoners, until he, she or they obtain bail, if the offence be bailable, or be otherwise discharged by due course of law.

SEC. 10. It shall not be necessary to the validity of any warrant for the apprehension of any person charged with an offence, or warrant of commitment, or search warrant,

that it be under the seal of the judge or justice of the peace granting or issuing the same; but every such warrant under the hand of the judge or justice of the peace shall be as valid in law as if a seal were affixed. And no person shall be discharged on *habeas corpus* from his imprisonment merely by reason of any defect of legal precision, or want of technical form in the warrant of commitment, but the court or judge awarding such *habeas corpus* shall, in all such cases, proceed and determine as if the *mittimus* had all legal and technical form: *Provided* sufficient appear on the face of the *mittimus* to ascertain for what crime or offence such prisoner or prisoners shall have been committed.

SEC. 11. It shall be lawful for any judge or justice of the peace, upon complaint made before him upon oath or affirmation, that a larceny has been committed, and that the person affirming or swearing does verily believe that the stolen goods or other property, are or is concealed in any dwelling house, out house, garden, yard or other place or places, to issue a warrant under his hand, commanding every such dwelling house, or place, to be searched in the day time; and if any of the goods described in any such warrant be found therein, then that the said goods be seized and brought before the judge or justice issuing said warrant. If, upon examination of witnesses before the judge or justice of the peace who issued said warrant, it shall be determined by such judge or justice that the goods so brought before him have been stolen, it shall be the duty of such judge or justice either to keep possession of, or to deliver, or cause to be delivered, such goods to the sheriff of the proper county, there to remain until the conviction of the thief, or the claimant's right be otherwise legally ascertained. If the thief shall not be indicted at the next circuit court after the goods shall be seized, and an action shall not be commenced against the person or persons in whose possession such goods shall have been found, for the recovery thereof within one month after a circuit court shall have been held after such seizure, the said circuit court shall, at their next session, order such goods to be re-delivered to the person in whose possession they were found, which order shall be obeyed by the person in whose possession such goods may at the time be.— In case the judge or justice of the peace shall upon such examination as aforesaid, determine that such goods so seized had not been stolen, then the goods shall be immediately restored to the person from whose possession they were so taken.

SEC. 12. All acts and parts of acts coming within the

Search war-  
rants and pro-  
ceedings  
thereon

Acts repealed purview of this act are hereby repealed. This act to take effect from and after the first day of July next.

[Approved, Jan. 6, 1827.]

## DEPOSITIONS.

In force June 1, 1827. *AN ACT regulating the mode of taking depositions, and to provide for the perpetuating of testimony.*

Depositions of non-resident witnesses

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That when the testimony of any non-resident witness or witnesses, shall be necessary in any civil cause depending in any court of law or equity in this state, it shall be lawful for the party wishing to use the same on giving to the adverse party, or his attorney ten days' previous notice, together with a copy of the interrogatories intended to be put to such witness or witnesses to sue out from the proper clerk's office a *dedimus potestatum*, or commission, under the seal of the court, directed to any number of persons, not exceeding three, as commissioners, or to any judge or justice of the peace of the county or city in which such witness or witnesses may reside, authorizing and requiring him or them to cause such witness or witnesses to come before him or them, at such time and place, as he or they may designate and appoint, and faithfully to take his, her, or their deposition or depositions, upon all such interrogatories as may be enclosed with, or attached to said commission, both on the part of the plaintiff and defendant, and none others, and to certify the same when thus taken, together with the said commission and interrogatories into the court in which such cause shall be depending, with the least possible delay.*

Of resident witnesses

SEC. 2. *When the testimony of any resident witness or witnesses shall be necessary in any suit in chancery in this state, it shall be lawful for the party wishing to use the same to cause the deposition or depositions of such witness or witnesses, to be taken before any justice of the peace, or clerk of the circuit or county commissioners' court of the county wherein such witness or witnesses shall reside without being required to sue out a commission or to file interrogatories for such purpose, on giving to the adverse party or his attorney reasonable notice of the time and place of taking the same. And it shall also be lawful, upon satisfactory affidavit being filed, to take the depositions of witnesses residing in this state, to be read in suits*

at law in like manner as is above provided in all cases where such witness or witnesses shall reside in a different county from that in which the court shall be held, is or are about to depart from the state, is or are confined in jail on legal process; or is or are unable to attend, such court on account of advanced age, sickness or other bodily infirmity: *Provided*, that such reasonable notice shall be intended to mean at least ten days, in all cases, and one day in addition thereto, (Sundays inclusive) for every thirty miles travel, from the place of holding the court, to the place where such deposition or depositions shall be taken.

SEC. 3. Previous to the examination of any witness <sup>Oath of witnesses</sup> whose deposition is about to be taken as aforesaid, he or she shall be sworn (or affirmed) by the person or persons authorized to take the same, to testify the truth in relation to the matter in controversy, so far as he or she may be interrogated; whereupon the said commissioner or commissioners, judge, justice of the peace or clerk, (as the case may be) shall proceed to examine such witness upon all such interrogatories as may be enclosed with, or attached to any such commission as aforesaid, and which are directed to be put to such witness, or where no commission shall be necessary, upon all such interrogatories as may be directed to be put by either party litigant, and shall cause such interrogatories, together with the answers of the witnesses thereto, to be reduced to writing in the order in which they shall be proposed and answered, and signed by such witness. After which it shall be the duty of the person or persons taking such deposition, to annex at the foot thereof, a certificate subscribed by himself, or themselves, stating that it was sworn to and signed by the deponent; and the time and place, when and where the same was taken. And every such deposition, when thus taken and subscribed, and all exhibits produced to the said commissioner or commissioners, judge, justice of the peace or clerk as aforesaid, or which shall be proved or referred to by any witness, together with the commission and interrogatories, if any shall be enclosed, sealed up and directed to the clerk of the court in which the action shall be pending, with the names of the parties litigant endorsed thereon: *Provided*, that when any deposition shall be taken as aforesaid, by any judge or justice of the peace out of this state, such return shall be accompanied by a certificate of his official character under the great seal of state, or under the seal of the proper court of record of the county or city wherein such deposition shall be taken.

<sup>How return-  
ed, &c.</sup>

SEC. 4. Every examination and deposition which shall

May be read  
in evidence

be taken and returned, according to the provisions of this act, may be read as good and competent evidence, in the cause in which it shall be taken, as if such witness had been present and examined by parol in open court on the hearing or trial thereof.

Commission-  
ers to take  
depositions

SEC. 5. Each and every commissioner or commissioners, judge, justice of the peace, or clerk of the circuit or county commissioners' court, who may at any time be required to take depositions, in any cause pending in any of the courts of law or equity in this state; or by virtue of any commission issued out of any court of record in any other state or territory, shall have power and authority to issue subpœnas if necessary, to compel the attendance of all such witnesses, as shall be named in the commission, or by the parties litigant, where no commission is necessary in the same manner and under the same penalties as is prescribed in other cases, where witnesses are directed to be subpoenaed.

Compensation  
of witnesses

SEC. 6. Every witness attending before any commissioner, judge, justice of the peace, or clerk as aforesaid, to be examined as aforesaid, shall be entitled to a compensation for his time and attendance, and travelling expenses, at the same rate as for the time being, is or shall be allowed by law to witnesses attending courts of record in this state; and the party requiring such examination shall pay the expenses thereof, but may if successful in the suit, be allowed for the same in the taxation of costs.

Informality  
what will be

SEC. 7. The party, his attorney or any person who shall in any wise be interested in the event of the suit, shall not be permitted to dictate, write or draw up any deposition, or depositions which may at any time, be taken under this act; and every deposition so dictated, written or drawn up, or that shall be returned to the court unsealed, or the seal of which shall be broken, shall be rejected by the court as informal and insufficient: *Provided*, such seal shall have been broken previous to its reception by the clerk, to whom it shall be directed.

Seals not to  
be broken

SEC. 8. It shall not be lawful for any party litigant or the clerk of the court, into which any deposition may be returned as aforesaid, to break the seal of the same, either in term time, or in vacation, unless by the permission of the court. And if any such person or clerk, shall presume to open any such deposition, when taken and returned as aforesaid, without such permission as aforesaid, he shall be considered guilty of a contempt of court, and may be punished accordingly: *Provided*, that it shall not be considered an offence for the clerk to break open any such deposition as aforesaid, where it is doubtful from the

endorsements made thereon, whether the same be a deposition or not; but in such case, it shall not be proper for such clerk to permit any person to examine any deposition, which may be thus opened by mistake, until permission shall have been first given by the court as aforesaid.

SEC. 9. All depositions taken in pursuance of this act when returned into court, may be read by either party, on the trial of the causes to which they relate.

Depositions,  
when read in  
evidence

SEC. 10. In all cases hereafter, where any person or persons shall desire to perpetuate the remembrance of any fact, matter or thing, which may relate to the boundaries or improvements of lands, name, or former name of water courses; the name or former name of any portion or district of country, regarding the ancient customs, laws or usages of the inhabitants of this country, as far as the same may relate to the future settlement of land claims, or touching the marriage or pedigree of any person or persons, or in relation to the title to slaves or servants, or any other matter or thing, necessary to the security of any estate, real or personal, or mixed, or any private right whatever; it shall be lawful for such person or persons, upon filing a petition supported by affidavit, in the circuit court of the proper county, setting forth particularly the fact or facts, intended to be established; to sue out from such court a *deditus potestatum*, or commission, directed to any two justices of the peace, or to any clerk of the circuit or county commissioners' court of the county wherein such testimony is to be taken, and may thereupon proceed to take such deposition or depositions, as shall be prayed for in said petition.

Perpetuating  
of testimony

SEC. 11. It shall be the duty of the person or persons, suing out such *deditus* as aforesaid, before proceeding to take such deposition as aforesaid, to give at least four weeks previous notice of the time and place when and where the same is to be taken, together with a copy of the petition annexed thereto, to each and every person who may be known to be interested in the subject matter of such deposition, or to his, her or their attorney, or in case the person be a *feme covert*, to her husband; or if a minor or minors to his, her or their guardian or guardians; or if such guardian or guardians should be interested, to such guardian or guardians as shall be appointed by the court, to defend the interests of such infant or infants; or in lieu of such written notice as aforesaid, such petitioner or petitioners, shall cause a notice in form as aforesaid, with a copy of the petition thereto annexed as aforesaid, addressed to such persons as may be known to be interested as aforesaid, as well as to all others whom it may con-

Notice to be  
given in such  
cases

cern, to be published for four weeks successively in some public newspaper printed in this state, at least eight weeks previous to the day of taking such deposition or depositions.

Opposite party may attend and cross examine

SEC. 12. The said justices of the peace, or clerk as aforesaid, shall attend at the time and place appointed, where each and every person who may think himself or herself interested in the deposition about to be taken, may attend by themselves or attorneys, and may examine and cross examine such deponent or deponents; and all such questions as may be proposed, together with the answers thereto by the witness, shall be reduced to writing in the English language, or in the language of the witness: (*Provided*, he or she shall not understand English) as near as possible, in the exact words of such deponent, which said questions and answers, when reduced to writing as aforesaid, shall be distinctly read over to the witness; and if found to be correct, shall be signed by him or her, in the presence of the said justices, (or clerk as the case may be,) who shall thereupon administer an oath or affirmation to such witness, as to the truth of the deposition, so taken as aforesaid, and shall annex at the foot thereof a certificate subscribed by himself or themselves, stating that it was sworn to, and signed by the deponent, and the time and place, when and where the same was taken; and all such depositions when thus taken, shall be carefully sealed up, and transmitted to the clerk of the circuit court of the county from which such dedimus shall have been issued, within thirty days from the time of taking the same; who shall thereupon enter the same at large upon the records in his office, and shall certify on the back of such deposition that the same has been duly recorded, and return it to the person or persons for whose benefit it shall have been taken.

Such testimony may be read in case of the death or legal disability of deponent

SEC. 13. All depositions taken in manner and form as is provided in the two foregoing sections, or a duly certified copy of the record of any such deposition, may in case of the death of any such deponent, or in case of inability to give testimony, in consequence of his, her or their insanity or imbecility of mind or body, or where such witness shall be rendered incompetent by judgment of law, or in the event of his, her or their removal, so that their testimony cannot be obtained in the ordinary way on trial, may be used as evidence in any cause to which the same may relate: *Provided*, that nothing herein contained, shall be so construed as to prevent any legal exception being made and allowed, to the reading of any such deposition, in any trial at law or in equity, in which the same may be introduced as evidence.

SEC. 14. The act entitled "an act regulating the manner of taking depositions," approved February 19th, 1819; the act entitled "an act regulating the mode of taking depositions," approved January 31st, 1821; the act entitled "an act to amend an act regulating the mode of taking depositions, approved January 31st, 1821," approved February 10th, 1823; and also, the act entitled "an act directing the mode of perpetuating testimony," approved February 25th, 1819; and particularly sections 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the act entitled "an act to prescribe the mode of proceeding in chancery," approved January 26th, 1827; as well as all other acts and parts of acts, which shall come within the purview of, or be repugnant to, this act, be, and the same are hereby repealed: Acts repealed  
*Provided*, that nothing in this act contained, shall be so construed as to affect any deposition heretofore taken in conformity with the existing laws; or to affect any deposition which may be hereafter taken, upon interrogatories now filed, or which may be filed before this act takes effect, or where notices have been, or may hereafter be given for such purpose so long as the existing laws upon that subject shall remain in force.

This act to take effect from and after the first day of June next.

[Approved, 9th Feb. 1827.]

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## DETINUE.

### *AN ACT concerning the action of Detinue.*

In force Jan.  
6, 1827

Affidavit to  
be made be-  
fore a capias  
in detinue cap-  
issue

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all actions of detinue, where the plaintiff shall file in the office of the clerk of the court in which such action is to be commenced, an affidavit on the oath or affirmation of the plaintiff, or some other credible person, stating that the property, to recover which such action is about to be commenced, is the property of the plaintiff, stating the value thereof, and that the defendant unlawfully detains the same, the clerk shall issue a writ of *capias in detinue*, and endorse the amount so sworn to, and direct the sheriff to take bail in double that sum.

SEC. 2. It shall be the duty of any sheriff to whom a writ of *capias in detinue* shall be directed to take the body of the defendant and commit him to the common jail of the county, unless he shall enter into a bond to the plain-

Sheriff to  
take the body  
of defendant,  
unless he give  
bond

tiff, conditioned that if judgment shall be rendered in such action against him, he will deliver to the plaintiff the property which shall be thereby recovered, and pay all damages which shall be assessed for the detention thereof, and costs of suit, the sheriff shall return such bond with the writ, as in other cases.

**Sheriff's liability for improper return**

SEC. 3. If any sheriff shall return any such writ executed, and shall not have the body of the defendant according to the command of the writ, or return a bond, as is provided in the preceding section, or the bond returned shall be adjudged insufficient by the court, and the defendant shall fail to perfect his bail if ruled thereto, the sheriff shall be made a co-defendant and may defend the suit upon the pleas of the defendant, and shall be subject to the same judgment and recovery as the defendant, and be joined therein. All questions concerning the sufficiency of such bond shall be determined during the return term.

**Bond when forfeited, remedy thereon**

SEC. 4. When any bond as aforesaid shall be forfeited, the plaintiff shall have the same remedy against the bail, and the bail shall have the same remedy against the principal, and the sheriff, when made a co-defendant, shall have the same remedy against the principal and bail as is or may be provided by law in cases of bail in other civil causes, and the same proceedings shall be had thereon.

**Bail, court may reduce the amount**

SEC. 5. Any court out of which any writ as aforesaid shall issue, or any judge thereof in vacation may reduce the sum for which bail is demanded: and the court may accept the surrender of the defendant and cancel such bond in the same manner, for the like causes, and with the like effect as in other cases of bail in civil actions.

**Proceedings in detinue**

SEC. 6. All actions commenced in manner aforesaid shall be conducted and proceeded on in all things according to the principles and usages of law in actions of detinue. If any verdict for the plaintiff shall omit the price, or value or damages for detention, the court may at any time award an enquiry to ascertain the same.

[Approved, Jan. 6, 1827.]

## DIVORCES.

**In force Jan. 12, 1827**

### *AN ACT amending the law concerning Divorces.*

**Fraudulent marriages declared void**

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly, That all marriages, where either of the parties had a former husband or wife living at the time of solemnizing the last marriage, shall*

be void; and any woman or maiden, who shall be duped or deceived into such subsequent marriage, shall be restored to all the rights she would have had, if such marriage had not taken place, and may sue for and recover damages for such fraud, as in cases of breach of marriage contract.

SEC. 2. When any divorce shall hereafter be granted for any cause, the court before which the same shall be tried, if the person applying, being a female, shall be poor and unable to pay costs, shall direct that no costs shall be taxed against such person, or charged for printing the notice: *Provided*, such person shall publish her notice in the paper published by the public printer.

Females to  
be divorced  
without costs  
in certain ca-  
ses

[Approved, Jan. 12, 1827.]

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*AN ACT concerning Divorces.*

In force June  
1, 1827

SEC. 1. *Be it enacted by the People of the State of Illinois, Divorces may be granted* represented in the General Assembly, That whenever a marriage has been, or hereafter may be contracted and solemnized between any two persons, and it shall be adjudged in the manner hereinafter provided, that either party, at the time of such marriage, was, and continues to be naturally impotent, or that he or she had a wife or husband living at the time of such marriage, or that either party has committed adultery subsequently to the marriage, or wilfully deserts and absents himself or herself from the husband or wife, without any reasonable cause, for the space of two years, and for extreme and repeated cruelty, or habitual drunkenness for the space of two years, in every such case it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract; but no such divorce shall in any wise affect the legitimacy of the children of such marriage, except in cases where the marriage shall be declared void on the grounds of a prior marriage: *Provided*, that any wilful desertion and absence which may have happened before this act takes effect shall be computed part of the two years absence and desertion, provided for in this act.

Proviso

SEC. 2. The circuit court, sitting as a court of chancery shall have jurisdiction in all cases of divorce and alimony by this act allowed; and the like process, practice and proceedings shall be had, as are usually had in other cases in chancery, except as is hereinafter provided, and except that the answer of the defendant need not be on oath. The proceedings shall be had in the county where

Circuit court  
to have juris-  
diction of such  
cases

the complainant resides, and the process may be directed to any county in the state.

Residence of  
complainant  
what necessa-  
ry

SEC. 3. No person shall be entitled to a divorce in pursuance of the provisions of this act, who has not resided in the state one whole year previous to filing his or her bill or petition, unless the offence or injury complained of, was committed within this state, or whilst one or both of the parties resided in this state.

Collusion of  
complainant,

SEC. 4. If it shall appear to the satisfaction of the court that the injury complained of was occasioned by collusion of the parties, or done with the assent of the complainant for the purpose of obtaining a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of adultery, when adultery is the ground of complaint, then no divorce shall be decreed.

SEC. 5. In all cases for a divorce, where the defendant shall appear and deny the charges in the complainant's bill or petition alleged, the same shall be tried by a jury; but if the bill or petition shall be taken for confessed, the court may proceed to a hearing of the cause, by examination of witnesses in open court, and no confession of the defendant shall be taken as evidence, unless the court or jury shall be satisfied that such confession was made in sincerity, and without fraud or collusion, to enable the complainant to obtain a divorce. But any marriage which may have been celebrated or had in any foreign state or country may be proved by the acknowledgment of the parties, their co-habitation and other circumstantial testimony.

Alimony,  
when allowed

SEC. 6. When a divorce shall be decreed, it shall and may be lawful for the court to make such order, touching the alimony and maintenance of the wife, the care, custody and support of the children, or any of them, as from the circumstances of the parties and the nature of the case, shall be fit, reasonable, and just. And in case the wife be complainant, to order the defendant to give reasonable security for such alimony and maintenance, or may enforce the payment of such alimony and maintenance in any other manner consistent with the rules and practice of the court. And the court may, on application, from time to time make such alterations in the allowance of alimony and maintenance as shall appear reasonable and proper.

Females may  
sue, &c.

SEC. 7. Any woman suing for a divorce, who shall make it appear satisfactory to the court, that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her complaint without costs, and in such cases, no fees shall be charged by the officers of

the court. All acts heretofore passed on the subject of divorces, are by this act repealed.

This act to take effect on the first day of June next.

[Approved, Jan. 31, 1827.]

## DOWER.

### *AN ACT for the speedy assignment of Dower, and Partition of Real Estate.* In force June 1, 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That when the heir or other person, having the next immediate estate of freehold or inheritance, shall not within one month next after demand made, assign and set over to the widow of the deceased to her satisfaction, her dower in, and to all lands, tenements and hereditaments, whereof by law she is or may be dowable, according to the true intentment of law, then such widow may sue for, and recover the same, in the manner hereafter prescribed, against such heir or other person having the next immediate estate of freehold or inheritance, or tenant in possession, or other person or persons claiming right or possession in said estate.

Heir, &c refusing to assign dower

SEC. 2. Every widow claiming dower, may file her petition in the circuit court of the county against the parties aforesaid, stating their names if known, setting forth the nature of her claim, and particularly specifying the lands, tenements, and hereditaments, in which she claims dower, and praying that the same may be allowed to her, and the clerk shall thereupon issue a summons to the parties to appear at the next term of the said court, to answer the complaint, which shall be served by the sheriff as other writs and process. If the parties be unknown, or do not reside in the county, said clerk shall cause an advertisement to be inserted in the nearest newspaper, printed in this state, to said premises, for four weeks successively, notifying said parties, that such petition is filed, and requiring them or any of them, to appear at the next term of the circuit court, and shew cause why such dower should not be assigned: and which publication shall be deemed due notice; and the parties aforesaid, or any other person interested therein, may appear and contest the widow's right to dower.

Summons

Publication of notices

SEC. 3. In all cases where the claim of the widow to dower may be contested, the parties contesting the same shall be required to enter their appearance to the action,

Appearance

and the court shall thereupon proceed to try the cause, or direct an issue for that purpose, as the circumstances of the case may require.

**Guardian ad litem for minors** SEC. 4. Where any of the parties defendants are minors and under age, and without guardians, the court shall appoint guardians *ad litem* for such minors.

**Judgment** SEC. 5. Where the court adjudges that the widow shall recover dower, it shall be so entered of record, together with a description of the land out of which she is to be endowed; and said court shall thereupon appoint three commissioners, not connected with any of the parties, either by consanguinity or affinity, and entirely disinterested, each of whom shall take the following oath, to be administered by the court, or some justice of the peace: "I do solemnly swear, that I will fairly and impartially allot and set off to A B. widow of C. D. her dower, out of the lands and tenements described in the order of the court for that purpose, if the same can be made consistent with the interest of the estate, according to the best of my judgment, so help me God." And said commissioners shall set off and allot to said widow her dower by metes and bounds, according to quality, and quantity, of all the lands, tenements and hereditaments described in said order of court: *Provided*, the widow shall have the homestead, or dwelling house of the husband, if she desire it; and make return in writing under their hands and seals to said court; which if approved by said court, shall vest in her an estate in the lands and tenements so set off and allotted to her, for and during her natural life:

**Not to commit waste** SEC. 6. No woman that shall be endowed of any lands, tenements and hereditaments shall wantonly or designedly commit or suffer any waste thereon, on penalty of forfeiting that part of the estate whereupon such waste shall be made, to him or them that have the immediate estate of freehold or inheritance in remainder or reversion, (and in case of negligent or inadvertent waste,) by her done or suffered, the damages that may be assessed for such waste, to be recovered by action of waste.

**Damages for waste** SEC. 7. Where a widow has claim to dower in lands lying in different counties, she may proceed in the circuit court of the county where the lands lie, and make recovery in the manner as is herein directed; and in all cases where the report assigning dower shall be approved, the court shall forthwith cause the widow to have possession by a writ directed to the sheriff for that purpose, and such widow shall also be entitled to reasonable damages to be awarded her from the time of her demand and refusal to assign her, her reasonable dower; which may be assessed

**Writ of possession**

**And damages to be awarded the widow**

by the court, or a jury if required, shall be empanelled for that purpose, and execution may issue therefor.

SEC. 8. The widow may in all cases retain the full possession of the dwelling house, in which her husband most usually dwelt next before his death, together with the out houses and plantation thereto belonging, free from molestation and rent until her dower be assigned.

SEC. 9. If the commissioners aforesaid shall report that the lands or other estate, is not susceptible of a division, without great injury thereto, a jury shall be empanelled to enquire of the yearly value of the widow's dower therein, and shall assess the same accordingly; and the court shall thereupon render a judgment that there be paid to such widow as an allowance in lieu of dower, on a day therein named, the sum so assessed as the yearly value of her dower, and the like sum on the same day in every year thereafter, during her natural life; and such jury shall moreover, if the same has not been done, assess the damages which may have accrued, down to the time of rendering the verdict.

SEC. 10. Heirs, or if under age, their guardians, or any other persons interested in lands, tenements, or hereditaments, may also petition the court to have the widow's dower assigned, which shall be proceeded in, in the same manner as is prescribed in other cases.

SEC. 11. If any woman shall be divorced from her husband, for the fault or misconduct of such husband, except where the marriage was void from the beginning, she shall not thereby lose her dower; but if such divorce be for her fault or misconduct, she shall forfeit her dower; and where a divorce is obtained for the fault and misconduct of the husband, he shall lose his right to be *tenant by the curtesy* in the wife's lands.

SEC. 12. If a wife voluntarily leave her husband and commit adultery, she shall be forever barred her dower, unless her husband be voluntarily reconciled to her, and suffer her to dwell with him.

SEC. 13. When any person, by last will and testament, shall devise his or her real estate, or any part thereof, to two or more devisees, not ascertaining the metes and boundaries of each devisee's share, and their shares be undivided, such devisees or any of them, and should they or any of them be under age, their guardian or guardians, may apply to the circuit court of the county where the whole of the lands, or a part thereof may lie, by petition in writing; and said court may order a division thereof to be made agreeably to the true intent and meaning of said last will and testament; and said court shall appoint three com-

Widow to have the dwelling house

Land not susceptible of division

Heirs, may petition for assignment of dower

How divorce shall effect dower

Joint tenants may petition for a division of their land

**missioners**, not connected with any of the parties, either by consanguinity or affinity, and entirely disinterested; each of whom shall take an oath before the court, or some justice of the peace, fairly and impartially to make partition of said lands, if the same can be done consistently with the interest of the estate; and the said commissioners shall go upon the premises and make partition of said lands, tenements and hereditaments, assigning to each devisee his or her share, by metes and bounds, and shall make report of their proceedings to the next term of the circuit court; which report, if approved by said court, shall be entered of record, and shall be conclusive to all parties concerned.

**SEC. 14.** Where the real estate of any person dying intestate, shall descend to two or more children, or other heirs of the intestate, and the same be not divided, or where two or more persons, proprietors of any tract or tracts of lands, tenements or hereditaments, within this state are desirous of having the same divided, the circuit court on application, by petition, may order and direct a division of such lands, tenements, or hereditaments, agreeably to the law of descents, where the lands are claimed by descent, or agreeably to the rights of the parties, proprietors and owners aforesaid, by metes and bounds, and shall thereupon appoint three commissioners, who shall make partition, and return their proceedings under their hands and seals, as is prescribed in the previous section of this act; and which report, if approved by said court, shall be recorded as in case of devisees, and shall be conclusive on all parties concerned.

**SEC. 15.** All devisees, heirs, or owners of lands, tenements or hereditaments as aforesaid, or the guardians of such as are under age, not applying for such division, (and if any heir, devisee or owner, be under age, and without a guardian, the court shall appoint a guardian *ad litem* for such minor,) shall have notice of the application for such partition, by summons duly served, or by advertisement, to be published for four weeks in the nearest newspaper to the premises, printed in this state.

**SEC. 16.** Where any lands, houses, or lots, are so circumstanced, that a division thereof cannot be made without manifest prejudice to the proprietors of the same, and the commissioners appointed to divide the same, shall so report to the court; the court shall thereupon give an order to said commissioners or other person or persons, to sell such lands, houses and lots, or houses and lots at public vendue, upon such terms, and by giving notice of sale, as the court shall direct, and who shall make and execute

**Coparceners  
or tenants in  
common**

**Entitled to a  
division**

**Notice to all**

**Lands not sus-  
cepible of di-  
vision**

**To be sold**

good and sufficient conveyance or conveyances to the purchaser or purchasers thereof; which shall operate as an effectual bar, both in law and equity against such owners or proprietors, and all persons claiming under them; and the moneys arising therefrom, to pay to the owners or proprietors of such houses and lots, their guardians or legal representatives, as shall be directed by said court. The court to make such order in relation to costs as shall seem right.

SEC. 17. An act for the speedy assignment of dower, <sup>Act repealed</sup> approved February 12, 1819, and an act for the partition of lands, approved February 20th, 1819, be and the same are hereby repealed.

SEC. 18. The commissioners to be appointed under this act shall be allowed as a compensation for their services, one dollar per day each, to be taxed as other costs. This act to take effect on the first day of June next; but rights acquired under those acts are not affected by this act.

[Approved, Feb. 6, 1827.]

## ELECTIONS.

### *AN ACT to amend the act regulating Elections.*

In force Feb.  
9, 1827

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county commissioners' courts of the several counties in this state, are hereby empowered to increase the election precincts of their respective counties for the election of members of the general assembly and other officers, to six, under the restrictions of the act to which this is an amendment.

SEC. 2. There shall be appointed at the present session of the general assembly, in the mode prescribed by the "Act regulating the manner of appointing justices of the peace," approved February 19, 1819, a suitable number of justices of the peace for the several counties created at the present session of the general assembly; any law to the contrary notwithstanding.

SEC. 3. Where any new county has been created at the present session of the general assembly, and there shall be residing in such new county, persons now in the commission of justice of the peace, they shall exercise within such county the same jurisdiction, as though they had been commissioned for such new county, until they are succeeded by election.

[Approved, Feb. 9, 1827.]

And money paid to the owners.

Compensation to commissioners

In force Feb.  
9, 1827

County commissioners may increase the number of precincts.

Justices of the peace appointed

When to act for new counties

In force Jan. 11, 1827. *AN ACT* directing the mode of electing Electors of President and Vice President of the United States.

**Electors to be chosen by general ticket** SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That there shall be elected, by general ticket, on the first Monday in November, one thousand eight hundred and twenty-eight, and on the first Monday in November, quadriennially thereafter, as many electors of President and Vice President of the United States, as this state may be entitled to elect, which election shall be conducted, and returns thereof made, in all respects, in the manner prescribed for the election of governor.

**Clerk's duty when to make returns to the secretary of states' office** SEC. 2. The clerks of the several county commissioners' courts shall, within fifteen days next after holding an election, for electors as aforesaid, send by express, to the secretary of state, an abstract of the returns of said election. Immediately after the said returns shall have been made, the secretary of state, auditor of public accounts and treasurer, or any two of them shall, in the presence of the governor, or person administering the government, proceed to open and canvass said election returns, and to declare the persons having the highest number of votes elected; but should any two or more persons be returned, with an equal and the highest vote, the said secretary, auditor and treasurer, or any two of them, shall in the presence of the governor, or person administering the government, decide by lot which of the persons so equal and highest, shall be elected.

**Result of the election to be published** SEC. 3. The governor, or person administering the government, shall cause the result of said election to be published in the paper printed by the public printer, and transmit by express, to the persons elected, certificates of their election.

SEC. 4. There shall be paid to said express out of the treasury, on the warrant of the auditor, mileage at the rate of ten cents per mile for bringing said returns to the seat of government, or for carrying a certificate of election to an elector. The secretary of state shall certify to the auditor how much each express shall be entitled to for services rendered under this act.

**Electors to meet at the seat of government** SEC. 5. The electors chosen as aforesaid, shall meet at the seat of government of this state, at the time appointed by the laws of the United States, and give their votes in the manner therein provided; and perform such duties as are or may be required by law. Each elector shall receive for every twenty miles necessary travel in going to the seat of government to give his vote, and in returning

to his residence, to be computed by the most usual route, <sup>Their compensation</sup> the sum of three dollars, to be paid on the warrant of the auditor, out of any money in the treasury, not otherwise appropriated. All prior acts on the subject of the election of electors of President and Vice President of the United States are hereby repealed. <sup>Acts repealed</sup>

[Approved, Jan. 11, 1827.]

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## ESTRAYS, &c.

*AN ACT* concerning water crafts found adrift, lost goods, <sup>In force June</sup> 1, 1827 and stray animals.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That if any person or persons shall hereafter stop or take up any keel or flat boat, ferry flat, batteau, perogue, canoe, or other vessel, or water craft found adrift on any water course within the limits or upon the borders of this state, and the same shall be of the value of five dollars, or upwards, including her cargo, tackle, rigging and other appendages, it shall be the duty of such person or persons, within five days thereafter, (provided the same shall not have been previously proven and restored to the owner,) to go before some justice of the peace of the proper county, and make affidavit in writing, setting forth the exact description of such vessel or craft, when and where the same was found, whether any, and if so, what cargo, tackle, rigging, or other appendage, was found on board, or attached thereto, and that the same has not been altered or defaced, either in the whole or in part, since the taking up, either by him, her or them, or by any other person or persons, to his, her or their knowledge. And the said justice shall thereupon issue his warrant, directed to some constable of his township, commanding him forthwith to summon three respectable householders of the neighborhood, if they cannot otherwise be had, whose duty it shall be to proceed without delay to examine and appraise such boat or vessel, her cargo, tackle, rigging and all other appendages as aforesaid, and to make report thereof, under their hands and seals, to the justice issuing such warrant as aforesaid, who shall enter the same together with the affidavit of the taker up at large in his stray book; and it shall be the further duty of such justice, within ten days after the said proceedings shall have been entered on his stray book as aforesaid, to transmit a certified copy thereof to the clerk of the coun-

Duty of persons taking up water crafts

ty commissioners' court of the proper county, to be by him recorded in his estray book, and file the same in his office.

Boats, &c.  
when taken  
up to be ap-  
praised & ad-  
vertised

SEC. 2. In all cases where the appraisement of any such boat or vessel, including her cargo, tackle, rigging, and other appendages as aforesaid, shall not exceed the sum of twenty dollars, the taker up shall advertise the same on the door of the court house, and in three other of the most public places in the county, within ten days after the justice's said certificate shall have been entered on the records of the county commissioners' court, and if no person shall appear, to claim and prove such boat or vessel within six months from the time of the taking up as aforesaid, the property in the same, shall vest in the taker up, but if the value thereof shall exceed the sum of twenty dollars, it shall be the duty of the clerk of the county commissioners' court, within twenty days from the time of the reception of the justice's said certificate at his office, to cause an advertisement to be set up on the door of the court house, and at three other of the most public places in the county, and also a notice thereof to be published for three weeks successively, in some public newspaper printed in this state. And if the said boat or vessel be not claimed and proven within ninety days after the advertisement of the same as aforesaid, it shall be the duty of the taker up to deliver the same to the sheriff of the county wherein such boat or vessel may have been so taken up, who shall thereupon proceed to sell the same at public auction, to the highest bidder for ready money, having first given fifteen days' notice of the time and place of sale; and the proceeds of all such sales, after deducting the costs, and other necessary expenses, shall be paid into the county treasury.

And if not  
claimed how  
to proceed

Lost goods &  
money, finder  
how to pro-  
ceed

SEC. 3. If any person or persons shall hereafter find any lost goods, money, bank notes, or other choses in action, of any description whatever, of the value of five dollars and upwards, it shall be the duty of such person or persons, to inform the owner thereof, if known, and to make restitution of the same, without any compensation whatever, except the same shall be voluntarily given on the part of the owner; but if the owner be unknown, such person or persons shall within five days after such finding as aforesaid, take such goods, money, bank notes, or other choses in action before some justice of the peace of the proper county and make affidavit of the description thereof, the time and place, when and where the same was found, that no alteration had been made in the appearance thereof since the finding of the same, whereupon the justice shall enter a

description of the property thus found and the value thereof as near as he can ascertain, in his estray book, together with the affidavit of the finder, to be taken as aforesaid; and shall also within ten days after the said proceedings shall have been entered on his estray book as aforesaid, transmit to the clerk of the county commissioners' court, a certified copy thereof, to be by him recorded in his estray book, and to file the same in his office.

SEC. 4. In all cases where such lost goods, money, bank notes, or other choses in action, shall not exceed the sum of fifteen dollars in value, it shall be the duty of the finder to advertise the same on the door of the court house, and in three other of the most public places in the county, and if no person shall appear to claim and prove such money, goods, bank notes, or other choses in action, within twelve months from the time of such advertisement, the right to such property, where the same shall consist in goods, money or bank notes, shall be vested in the finder: but if the value thereof shall exceed the sum of fifteen dollars, it shall be the duty of the clerk of the county commissioners' court, within twenty days from the time of the reception of the justice's said certificate at his office, to cause an advertisement to be set up on the court house door, and in three other of the most public places in the county, and also a notice thereof to be published for three weeks successively in some public newspaper printed in this state; and if the said goods, money, bank notes, or other choses in action, be not reclaimed within six months after the advertisement thereof as aforesaid, it shall be the duty of the finder, if the property shall consist in money or bank notes, to deliver the same to the county treasurer, after deducting the necessary expenses, hereinafter provided for: if in bonds, bills, notes of hand, patents, deeds of conveyance, articles of apprenticeship, mortgages, or other instruments of value, the same shall be delivered to the clerk of the county commissioners' court, to be preserved in his office, for the benefit of the owner whenever legal application shall be made therefor; if in goods, wares or merchandize, the same shall be delivered to the sheriff of the county, who shall thereupon proceed to sell the same, at public auction to the highest bidder for ready money, having first given ten days' notice of the time and place of sale, and the proceeds of all such sales, after deducting the costs and other expenses, shall be paid into the county treasury.

SEC. 5. In all cases where any vessel or water craft shall be taken up, or any goods, money or bank notes, shall be found as aforesaid, which shall be of a value less than five

Where the amount does not exceed \$15

Where the amount exceeds \$15

Where the amount is under \$15

dollars, it shall be his duty to advertise the same, by setting up three advertisements in the most public places in the neighborhood, but in such case, the taker up or finder shall be required to keep and preserve the same, in his or her possession, and shall make restitution thereof to the owner without fee or reward, except the same be given voluntarily whenever legal application shall be made for the same: *Provided*, it be done within three months from the time of such taking up or finding; but if no owner shall appear to reclaim such property within the time aforesaid, the exclusive right to the same shall be vested in the finder or taker up.

SEC. 6. Every person being a householder who shall take up any stray horse, gelding, mare, colt, mule, or ass, shall within five days thereafter, take the same before some justice of the peace, of the county wherein such stray shall have been taken up, (provided the same shall not have been previously proved by the proper owner or owners, and a tender made for the compensation herein provided for) and make oath before such justice that the same was taken up at his or her plantation, or place of residence, in said county, (or otherwise as the case may be) and that the marks or brands have not been altered by him or her, or any other person or persons, to his or her knowledge, either before or since the taking up, the justice shall then issue his warrant directed to a constable of his town<sup>s</sup>hip, commanding him to summons three disinterested householders of the neighborhood, unless they can otherwise be had, to appraise such stray, and after they or any two of them, have been sworn to appraise such stray, without partiality, favor, or affection, they shall forthwith proceed to appraise the same, and shall immediately make report thereof, in writing under their hands and seals, to the said justice; in which they shall be required to set forth a description of the marks, natural and accidental, brands, stature, colour, and age, of such horse, gelding, mare, colt, mule, or ass, and the said justice shall thereupon enter the same in his stray book, and transmit a certified copy thereof, under his hand and seal, together with the original return of the appraisers, to the clerk of the county commissioners' court of said county, within ten days thereafter, who shall enter the same in his stray book, and file the aforesaid transcript, and report of the appraisers in his office; and the said clerk shall, within twenty days from the time of the reception of the justice's said transcript as aforesaid, cause an advertisement thereof to be set up on the door of the court house, and at three other of the most public places in the county; and also a notice to be

Stray animals, the taker up how to proceed

published for three weeks successively in some public newspaper printed in this state: *Provided*, that the newspaper publication may be dispensed with in all cases where the value of such stray shall not exceed the sum of fifteen dollars.

SEC. 7. Any person, being a householder, who shall take up any head of neat cattle, sheep, goat or hog shall within five days thereafter, cause the same to be advertised in three different places in the neighborhood or township, and shall also within ten days thereafter, unless such stray or strays, shall have been previously reclaimed by the owner, go before some justice of the peace of the proper county, and make oath, as is required in the taking up of an stray horse, whereupon such justice shall take from such taker up, upon oath, a particular description of the marks, brands, color and age of such neat cattle, sheep, goat or hog, and said justice shall also cause such stray or strays, last mentioned as aforesaid, to be appraised in like manner as is required to be done in the case of an stray horse, after which the same entries and proceedings shall be made, as is required in the sixth section, except that it shall not be necessary to make publication in a newspaper, where the valuation of the property shall not exceed the sum of fifteen dollars: *Provided*, that if two or more estrays of the same species are taken up by the same person, at the same time, they shall in all cases, be included in one entry, and in one advertisement, and in such case the said justice, clerk and appraisers shall receive no more for their services than is allowed in cases where but one of the same species is taken up.

SEC. 8. Any person, being a householder, finding any stray horse, gelding, mare, colt, mule or ass, running at large, without any of the settlements in this state, may take up the same, and shall forthwith take such stray or strays before the nearest justice of the peace, and make oath as directed in the sixth section of this act, after which it shall be lawful for such person to post such stray or strays, in manner and form as is hereinafter directed, in cases where estrays are taken up within the settlements: *Provided*, that nothing in this act contained shall be so construed as to authorize any person to take up, or stop, any stray animal, between the first day of May and the first day of November, unless the same be a work beast, and manifestly straying away from the owner.

When neat cattle, &c.

Horses running at large without the settlement

When lawful to take them up

SEC. 9. As a reward for the taking up of all boats and other vessels, and of estrays, and for the finding of all lost goods, money, bank notes, and other choses in action, there shall be paid by the owner to the taker up or finder,

before restitution of the property, or proceeds thereof, shall be made for every horse, gelding, mare, colt, mule, or ass, the sum of one dollar, except where the same may have been taken up out of the settlements, in which case the taker up shall be allowed the sum of three dollars; for each head of neat cattle, fifty cents; for every sheep or goat twenty-five cents, and for every hog above six months old the sum of ten cents. And in all cases where goods, money or bank notes shall be found, the finder shall be entitled to ten per cent upon the value thereof; in addition to which said allowances, the owner shall also be required to pay to the taker up or finder, all such costs and charges as may have been paid by him or her to the justice and clerk for their services to be rendered as aforesaid, including the costs of publication, together with reasonable charges for keeping and taking care of such property, which last mentioned charge, in case the taker up or finder and the owner cannot agree, shall be assessed by two disinterested householders of the neighborhood to be appointed by some justice of the peace of the proper county, whose decision when made, shall be binding and conclusive on all parties; but where the animal taken up is suitable for the harness or saddle, no charge shall be allowed for keeping the same, but no such animal shall be kept out of the county where the same shall have been taken up, more than one week at any one time.

SEC. 10. In all cases where any stray horse, gelding, mare, colt, mule or ass, neat cattle, sheep, goat, or hog, shall be taken up as aforesaid, and no owner shall apply to prove his or her property, within a year after advertisement shall be made as aforesaid, and when the valuation shall not exceed the sum of ten dollars, the property shall be vested in the taker up; but if the valuation thereof shall exceed the sum of ten dollars and no owner appears within the time aforesaid, it shall be the duty of the taker up, to deliver the same to the sheriff of the county, who shall thereupon proceed to sell such stray or strays at public auction to the highest bidder, for ready money, having first given ten days' notice of the time and place of sale, and the money arising from the sale thereof, after deducting the costs and charges paid by the taker up, and reasonable expenses for keeping the same, together with all other costs and charges which may be incident thereto, shall be paid into the county treasury: *Provided*, that the taker up shall, in all cases, have the privilege, at the expiration of the year as aforesaid, to pay into the county treasury the appraised value of such stray, after deducting the costs and charges aforesaid, and by so doing shall

Where no  
owner ap-  
pears, how to  
proceed

acquire an absolute right to the property in such estray: *And provided further*, that the allowance to be made for keeping such estray or estrays, where no owner appears, shall be ascertained by two disinterested householders as is provided in the ninth section.

SEC. 11. The *nett* proceeds of all such sales as may at any time be made by the sheriff in pursuance of this act, and all such money and bank notes as may be paid over to the county treasury, as directed in the tenth section, shall remain in the hands of the treasurer in trust for the owner, if any such shall apply within one year from the time the same shall have been paid over; but if no owner shall appear within the time aforesaid, the said money shall be considered as forfeited, and the claim of the owner thereto forever barred, in which event the money shall remain in the treasury, to be appropriated for county purposes.

Nett proceeds  
to go to the  
county

SEC. 12. The owner of any such property as aforesaid which may at any time be taken up, or found as aforesaid, shall have restitution of the same, or the proceeds thereof at any time before the same shall have become vested in the finder or taker up, or forfeited as aforesaid, by making the requisite proof before the clerk of the county commissioners' court of the proper county, who shall thereupon grant to him a certificate of such proof having been made, with direction to the taker up, finder, sheriff or county treasurer, (as the case may be) to make restitution thereof without delay; upon the production of which said certificate, the property or money as aforesaid, after all proper charges are deducted, shall be forthwith delivered or paid over to such claimant.

The owner to  
have restitu-  
tion

SEC. 13. If the taker up of any vessel or water craft, or stray beast, or the finder of any lost goods, money, bank notes, or other choses in action, shall be faithful in taking care of the same, and any unavoidable accident should happen thereto, without the fault or neglect of the finder or taker up, before the owner shall have an opportunity of reclaiming the same, such taker up or finder shall not be answerable therefor: *Provided*, that in all cases of accident as aforesaid it shall be the duty of the taker up or finder, within ten days thereafter to certify the same, under his hand and seal, to the clerk of the county commissioners' court, who shall make an entry thereof, on his estray book:

Liability of  
takers up

SEC. 14. If any person shall trade, or sell, or carry out of the limits of this state any such property as may at any time be taken up or found as aforesaid, except such animals as are suitable for the harness or saddle, as named in the ninth section of this act, before he or she shall be vest-

Not to dis-  
pose of or sell  
the property

Penalty for  
selling

Penalty for  
not comply-  
ing with this  
act

Estray horse  
to be exhibi-  
ted at the  
court house

Duty of clerks

Pounds to be  
erected

ed with the right to the same, agreeably to the provisions of this act, he or she so offending shall forfeit and pay double the value thereof, to be recovered by any person who will sue for the same, in any court, or before any justice of the peace having cognizance thereof, by action of debt, or upon the case; one half whereof shall go to the person suing, and the other half to the county.

SEC. 15. If any person shall take up any boat or vessel, or any stray beast as aforesaid, or shall find any goods, money, bank notes or other choses in action, and shall fail to comply with the requisitions of this act, every such person so offending, shall forfeit and pay the sum of twenty dollars, to be recovered before any justice of the peace, by any person who will sue for the same, the one half whereof shall be for the use of the person suing, and the other half for the county: *Provided*, that nothing herein contained shall prevent the owner from having and maintaining his action against such person, for the recovery of any damages, he or she may sustain.

SEC. 6. It shall be the duty of the taker up of any stray horse, gelding, mare, colt, mule or ass, to cause the same to be exhibited on the first day of the next term of the circuit court of the county succeeding the time at which such stray shall be taken up, from ten o'clock, A. M. until four o'clock P. M. of said day, that the owner may have an opportunity of reclaiming his property.

SEC. 17. It shall be the duty of each clerk of the county commissioners' court in this state to keep an estray book in which he shall register all certificates of strays, delivered to him as aforesaid, as well as all other certificates as aforesaid, and shall file the same in regular order; and it shall be his further duty to make out a fair and correct list of all such property as may, at any time, be taken up or found as aforesaid, and to affix the same on the door of the court house, on the first day of each term of the circuit court, omitting such as has been proven away, or which may have been lost by unavoidable accident, under the penalty of five dollars for such neglect or omission.

SEC. 18. The county commissioners' court in each county in this state shall cause a pound or stray pen to be erected, at or near the court house, within three months, after the place of erecting the public buildings shall be fixed upon, and as often thereafter as may be necessary, with a good and sufficient post and rail fence, gate, lock and key, wherein all stray horses, geldings, mares, colts, mules and asses, above two years old, taken up within the county, shall be exhibited as aforesaid. And the county commissioners failing to have such pound or stray pen erected,

shall severally forfeit and pay the sum of ten dollars for each term of the circuit court, which may be held, after the time for building the same shall have elapsed, until the same shall be erected, and until such pound or stray pen is erected, no person taking up any stray horse, gelding, mare, colt, mule, or ass, as aforesaid, shall be liable to any penalty for not exhibiting the same.

SEC. 19. The county commissioners' court in each county in this state, shall employ some fit person to take charge of all such pounds or stray pens, as may from time to time be erected in their several counties, whose duty it shall be to take charge thereof, and to keep the same in repair; and also to attend, on the several court days during the time said estrays are directed to be kept therein, with the key of the same, and the said commissioners' court shall make such reasonable allowance for the expense of erecting and keeping said pound or stray pen, as to them shall seem proper, to be paid out of the county treasury in like manner as other county charges are liquidated and paid; and any person being employed and undertaking to take care of any such pound or stray pen, and failing in his duty, agreeably to the directions in this act contained, shall forfeit and pay the sum of ten dollars, to be recovered before any justice of the peace; the one half whereof shall go to the person suing for the same, and the other half to the county.

SEC. 20. In all cases, where services shall be performed by any officer, or other person or persons, under this act, the following fees or compensation shall be allowed, to wit, to the justice of the peace for administering the oath to the taker up, or finder, making an entry thereof, with the report of the appraisers, and making and transmitting a certificate thereof to the clerk of the county commissioners' court, fifty cents: to the clerk for taking proof of the ownership of the property, and granting a certificate of the same twenty five cents; for registering each certificate transmitted to him by any justice as aforesaid, twelve and a half cents; for advertisements, including the newspaper publication, fifty cents, in addition to the costs of such publication; to the sheriff on account of all sales made by him, in pursuance of this act five per cent on the amount. To the constable for each warrant served on appraisers, twenty-five cents; all which said costs and charges, with the exception of the justices charge for granting a certificate of the proof of ownership, and the sheriff's commission shall be paid by the taker up, to the persons entitled thereto, whenever the said services shall be performed: *Provided*, that in all cases, where it shall be necessary to make publica-

Persons to  
take charge  
of them

Officers fees  
under this act

tion in a newspaper, the taker up or finder, (as the case may be) shall be required to deposit with the clerk of the county commissioner's court a sum of money sufficient to pay for the same, previous to the publication thereof. All which costs and charges shall be reimbursed to the taker up or finder, in all cases where restitution of the property shall be made to the owner, or the same shall be delivered to the sheriff, to be sold, or where money or bank notes, shall be paid into the county treasury, in addition to the reward, to which such person may be entitled, for such taking up or finding as aforesaid.

**SEC. 21.** In all cases of the division of counties, all strays, or other property taken up or found as aforesaid, shall belong to the county wherein the same may be found, and shall be disposed of as other strays or property posted in said county.

**SEC. 22.** For the more speedy recovery of estrays and other lost property, it shall and may be lawful at all times, for any person interested to search and examine the estray book of the clerk of the county commissioners' court, for any information he or she may want in relation to any property, which may at any time have strayed away, or been lost by any such person as aforesaid; for which said search, the clerk shall be entitled to no compensation whatever.

**SEC. 23.** If any person shall act contrary to the duties enjoined by this act, for which no penalty is herein before particularly pointed out, the person so offending, shall on conviction thereof, forfeit and pay, for every such offence, not less than five, nor more than one hundred dollars, to be sued for, in the name of the county commissioners, for the use of the proper county, in any court, or before any justice of the peace having cognizance of the same.

**SEC. 24.** All acts and parts of acts, contrary to, or repugnant to this act, are hereby repealed; but all offences heretofore committed, and rights accrued, under the act hereby repealed, may be prosecuted and enforced as though this act had not passed. This act to take effect on the first day of June next.

**When a county is divided**

**Estray books**

**Cases not provided for in this act**

**Acts repealed**

[Approved, Jan. 31, 1827.]

*AN ACT* declaring what shall be Evidence in certain cases. In force Jan. 10, 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the printed statute books of this state and of the late territories of Illinois and Indiana, printed under the authority of said state and territories shall be evidence in all courts and places of the private acts therein contained.

SEC. 2. The printed statute books of the several states and territories of the United States purporting to be printed under the authority of those states and territories, shall be evidence in all courts and places, of the legislative acts of those states and territories respectively.

SEC. 3. Copies of the proceedings and judgments before justices of the peace, certified by the justice or justices under his or their hands and seals, before whom such proceeding or judgment is had, shall be received as evidence of such proceeding or judgment. Where such certified copy is to be used as evidence in any county other than that in which the justice or justices so certifying shall reside, the same shall not be received as evidence, unless a certificate from the clerk of the county commissioners' court, (with the seal of the court,) shall be annexed thereto, certifying that on the day on which such proceeding was had, or judgment rendered, such justice so granting the same, was a justice of the peace duly commissioned and sworn.

SEC. 4. The official certificate of any register or receiver of any land office of the United States, to any fact or matter on record in his office, shall be received in evidence in any court in this state, and shall be competent to prove the fact so certified. The certificate of any such register of the entry or purchase of any tract of land within his district, shall be deemed and taken to be evidence of title in the party who made such entry or purchase, or his heirs or assigns, and shall enable such party, his heirs or assigns, to recover the possession of the land described in such certificate, in any action of ejectment or forcible entry and detainer, unless a better legal and paramount title be exhibited for the same.

SEC. 5. An exemplification by the secretary of this state of the laws of the other states and territories, which have been, or shall hereafter be transmitted by order of the executive or legislatures of such other states or territories, to the governor of this state, and by him deposited in the office of said secretary, shall be admissible as evidence in any court of this state.

The printed  
statutes, evi-  
dence

Also those of  
the U. S.

Copies of pro-  
ceedings be-  
fore justices  
of the peace

Official certif-  
icates, when  
evidence

Of secretary  
of state

SEC. 6. Every justice of the peace, hereafter to be

Of commissioners clerk, who evidence

sworn into office, shall take the oaths required by law, before the clerk of the commissioners' court of the proper county, who is hereby authorized to administer the same, and who shall certify the same upon the commission. The said clerk shall keep a book in which he shall enter the name of every justice of the peace sworn into office by him, together with the date of his commission, and the time when he was sworn into office; resignations of the office of justice of the peace shall be made to the clerk of the commissioners' court of the proper county, who shall immediately enter the date of every such resignation in the book above provided for; which book, or a certified copy of any entry in the same, shall be received as evidence in all courts within this state.

SEC. 7. The act entitled, "An act rendering authentic as evidence in the courts of this state, the public acts, records and judicial proceedings of courts in the United States, approved February 20, 1819;" and the act entitled "An act relating to evidence in courts of justice, approved January 28, 1823," are hereby repealed.

[Approved, Jan. 10, 1827.]

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## EXECUTORS AND ADMINISTRATORS.

In force June 1, 1827 *AN ACT to authorize Executors and Administrators to sell real estate in certain cases.*

When and how real estate may be sold

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever any executor or administrator, shall apply to the circuit court for the sale of the real estate of his or her testator or intestate, for the payment of debts, the personal estate being insufficient, such executor or administrator, shall give twenty days notice of such application, by serving a notice on the devisees or heirs, (or guardians of such as may be under age, should they have guardians) of the deceased, or by publishing a notice for three weeks, in the nearest newspaper printed in the state, to the premises, requiring all persons interested to appear at the court to which the application for such order of sale will be made, and shew cause, if any they have, why the whole or so much of the real estate of said testator or intestate should not be sold as will be sufficient to pay his or her debts.

Circuit court to examine applications

SEC. 2. The circuit court shall examine into the application and abstract of debts and credits of the estate as

furnished from the office of the judge of probate, and such other evidence as either party may adduce; and if the personal estate is not sufficient to pay the debts of the estate, the circuit court may order the whole, if necessary, if not, then such part thereof, from time to time, of the real estate of such testator or intestate, to be sold as will be sufficient to pay the debts of such estate; and when a part of the real estate is ordered to be sold, the order of the court shall specify, as particularly as may be, the part so ordered to be sold.

SEC. 3. Where any houses and lots, or other real estate, is so situated, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the circuit court may order the whole or a greater part thereof, than is necessary to pay such debts to be sold, and the overplus money arising from such sale, shall be distributed among the heirs or devisees according to their respective rights.

SEC. 4. No lands or tenements shall be sold by virtue of any such order of the circuit court, unless such sale be at public vendue, and between the hours of ten in the morning and the setting of the sun of the same day; nor unless the time and place of holding such sale shall have been previously advertised for the space of four weeks, by putting up a written notice, describing the premises to be sold, with common certainty, in four of the most public places of the county; and should the court so direct, by causing an advertisement of such sale, to be inserted in some <sup>Advertisement</sup> newspaper printed in the state, for three weeks, previous to such sale. And if any executor or administrator, shall sell any real estate contrary to the provisions of this act, he, she or they, so offending, shall forfeit and pay five hundred dollars, to be recovered by action of debt, with costs of suit, by any person who will sue for the same; which sum, when recovered, shall be for the use of the estate: *Provided*, that no such offence shall affect the validity of such sale, and that the person aggrieved, shall in all cases have a right to bring suit and recover damages which he may have sustained in consequence thereof.

SEC. 5. Executors or administrators may give such <sup>A credit may be given</sup> length of credit, not exceeding one year, as they shall think best calculated to promote the interest of the estate, taking good real or personal security for the payment of the purchase money.

SEC. 6. All sales of real estate to be made by order of the circuit court, shall be made and conveyances executed by the executors or administrators applying for such order; and the conveyances for the same, shall set forth such order at large, and shall be valid and effectual against the

Sales to be at  
public vendue

## EXECUTORS AND ADMINISTRATORS.

heirs and devisees of such testator or intestate, and all persons claiming by or under them.

SEC. 7. All moneys arising from sales of real estate by any executor or administrator, shall be assets in his, her, or their hands, and subject to the payment of debts in the same manner as other assets; and all executors and administrators, upon obtaining an order to make sale of real estate as aforesaid, shall return an inventory of such sale, describing the real estate sold, the amount for which the same was sold, the name of the purchaser, what security taken, whether by mortgage or collateral security, and the credit given upon such sale; and the judge of probate shall enter the same of record as in other cases.

SEC. 8. Where application may be made under this act for the sale of real estate, and any one of the heirs or devisees of the testator or intestate, are infants and without a guardian, the circuit court shall appoint some suitable person to be guardian *ad litem* for such infants, for the sole purpose of appearing for, and taking care of the interests of such infant upon said application.

SEC. 9. Where any testator or intestate dies seized of any certificate or certificates, to lands not cleared out of the office, and the estate of such deceased person is not sufficient after the payment of debts to complete the payments thereon, it shall be lawful for the executors or administrators, to sell or dispose of such certificate or certificates, in such manner as they may deem most advantageous to the heirs of such testator or intestate.

SEC. 10. Appeals shall lie from the judgment of the circuit to the supreme court, in favor of any person claiming to be aggrieved; such appeal being entered during the term at which the judgment was rendered.

SEC. 11. The act entitled "An act for the sale of the real estate of minors in certain cases," approved February 2, 1821; and an "Act to authorize executors and administrators to sell real estate in certain cases," approved January 28, 1823, are hereby repealed: *Provided*, that all proceedings lawfully begun under said acts, may proceed, and be completed in the same manner as though this act had not been passed. This act to take effect the first of June next.

[Approved, Feb. 7, 1827]

*AN ACT regulating the salaries, fees and compensation of the several officers and persons therein mentioned.*

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the salaries, fees and compensation of the several officers and persons hereinafter mentioned, are established as follows, to wit:*

SALARIES, &c.

To the governor, per annum,	\$1000	Salaries
The secretary of state, exclusive of fees, per annum	600	
The auditor of public accounts, inclusive of clerk hire, per annum,	1200	
The state treasurer, inclusive of clerk hire, per annum,	800	
The chief justice and each of the associate justices of the supreme court, respectively, per annum,	800	
The attorney general, per annum,	350	
Each circuit attorney, per annum,	250	
The adjutant general, per annum,	100	
All of which salaries shall be paid to the persons entitled thereto, in quarter yearly instalments, on the warrant of the auditor, out of any moneys in the treasury not otherwise appropriated.		

SEC. 2. Compensation of the members of assembly, &c.

There shall be allowed to the speaker of the senate and house of representatives, respectively at the present session, per day,

To each member of the senate and house of representatives, at the present session, per day,

To each speaker and member, in addition for every twenty miles' travel in going to, and returning from, the place of session,

To the secretary of the senate, and principal clerk of the house of representatives, respectively, per day,

To the enrolling and engrossing clerks of the senate and house of representatives, respectively, per day,

To the door keeper of the senate and house of representatives, respectively, per day,

And the said compensation, when due to the officers and members of the senate as aforesaid, shall be certified by the secretary thereof, with

Compensation  
to members,  
&c of the  
general as-  
sembly

\$4

3

3

5

4

3

the exception of his own compensation, which shall be certified by the speaker; and the compensation that may be due to the officers and members of the house of representatives, shall be certified by the principal clerk thereof, and that of the clerk, by the speaker; which said certificates, when made out as aforesaid, shall be sufficient evidence to the auditor of each person's claim, respectively, who shall issue his warrant on the treasury for the amount to which such person shall be entitled as aforesaid, to be paid out of any moneys in the treasury not otherwise appropriated.

#### INCIDENTAL EXPENSES, &c.

SEC. 3. The incidental expenses of the offices of the auditor of public accounts, state treasurer and secretary of state, shall include postage on all public papers sent to or from said offices relative to the business thereof, furniture for the same, the necessary fuel, and all such books, blanks and other stationary as shall be considered necessary for the convenient transaction of business in said departments respectively.

SEC. 4. For the purpose of defraying the incidental expenses aforesaid, it shall be the duty of said officers respectively, from time to time, as said expenses may be incurred, to lay proper vouchers for the same before the governor, whose duty it shall be, if such accounts shall appear to be reasonable, to allow the same, and to certify the amount thereof to the auditor, who shall thereupon be required to issue his warrant for the same to the person entitled thereto; to be paid out of any moneys in the treasury not otherwise appropriated.

#### SECRETARY OF STATE'S FEES.

SEC. 5. There shall be allowed to the secretary of state, in addition to his salary, the following fees, to wit:

For copies or exemplification of records, for every seventy-two words,

15

Affixing state seal with certificate of authentication

1

15

Copy of any law, for every seventy-two words,  
Official certificate, without seal, when not required for public use,

25

*Provided.* that he shall in no case be entitled to any fees whatever, when any services are

performed for the state, in discharge of the duties of his office.

JUDGE OF PROBATE'S FEES.

Taking proof of a last will or testament,	50
Endorsing certificates of probate thereon,	12 1-2
Recording last will and testament, for every seventy-two words,	15
Issuing letters testamentary or of administration, affixing seal thereto, and recording the same,	1 50
Taking bond of the executor or administrator,	75
Administering oath to each executor or administrator,	12 1-2
For each citation,	25
Taking and filing renunciation of the widow or next of kin,	25
Taking proof of a codicil, proved separately,	50
Endorsing certificate of probate on codicil,	12 1-2
Recording the same, for every seventy-two words,	15
Examining and approving each inventory, sale bill or account current, filed by executors or administrators,	50
Entering the settlement of executors or administrators on the order book,	75
Each copy of the settlement of executors or administrators, with certificate and seal,	1
For each decree limiting the time for exhibiting the claims of creditors,	25
For each order of distribution,	50
For each order on an executor or administrator to pay out of the estate to creditors, in proportion to their debts,	25
For copies or exemplifications of records, every seventy-two words,	15
Official certificate and seal,	50
Making out order for publication,	25
For allowing an appeal to the circuit court,	25
For issuing each special writ or summons with seal,	25

COUNTY COMMISSIONERS' FEES.

SEC. 6. There shall be allowed to each county commissioner, in full for his services, for each day's attendance in holding courts, the sum of one dollar and fifty cents, to be paid on the certificate of the clerk, out of any moneys in the treasury of the county not otherwise appropriated.

FEES OF THE CLERK OF THE SUPREME COURT.	
For each writ of error and seal, with supersedeas,	1
For each writ of error and seal, without supersedeas,	75
For each bond, when not furnished by the party,	50
Filing each paper, excepting records, and papers on appeals and writs of error,	6 1-4
Filing each record and accompanying papers on appeals and writs of error, as returned by the inferior courts,	20
Docketing cause,	12 1-2
Entering each rule or order of court, each entry being considered as one order,	25
Execution and seal,	50
Entering sheriff's return, on any writ or execution,	12 1-2
For each subpoena and seal,	50
For each scire facias, mandamus, and other special process, for every seventy-two words,	18
Sealing the same,	25
Bringing any particular record into court, of a suit, matter or thing not before the court,	25
Copy of a record or other proceedings, for every seventy-two words,	15
Entering judgment or decree, for every seventy-two words,	18
Entering each continuance from one term to another,	12 1-2
Making complete record when directed by the party, for every seventy-two words,	15
For each official certificate and seal, other than to the process of the court	50
Each official certificate, as aforesaid, without seal,	25
Entering attorney on the roll, administering oath, and certifying the same,	1
Making bill of costs for execution, and entering the same in the cost book,	37 1-2
Copy of the same when requested by either party,	25
Administering each oath,	12 1-2
CLERKS' FEES IN THE CIRCUIT COURTS.	
For each <i>capias</i> , summons, subpoena, and other process not herein specified, and sealing the same,	50
<i>Provided</i> , that only one subpoena shall be char-	

ged for every four witnesses, unless actually made out on request in writing,	
For filing each paper in the progress of a suit, and appertaining to the same, excepting papers on appeal from justices of the peace,	6 1-4
Filing the papers on appeals from justices of the peace, taking appeal bond and issuing injunction thereon,	50
Taking bond for costs,	25
Filing and opening each deposition,	12 1-2
Entering each suit on the docket for trial,	12 1-3
Entering each order or rule of court for continuance, default to plead, or any order actually entered in the progress of a suit, and counting the whole as one entry,	25
For each discontinuance, retraxit, or nonsuit,	25
For each deditus or commission to take depositions,	50
Bringing any particular record into court of a suit, matter or thing, not properly before the court,	25
Calling and swearing each jury,	18 3-4
Swearing each witness on the trial of a cause,	6 1-4
Swearing any person to an affidavit,	12 1-2
Receiving and entering the verdict of a jury,	12 1-2
Entering each decree or final judgment in a cause,	25
Issuing each writ of <i>habeas corpus, certiorari, or procedendo,</i>	50
Assessing the damages on any bond, note or other instrument for the payment of money, by order of the court, and making a report thereof in writing,	25
Entering special bail of record, in each case,	25
Making a list of jurors, when requested,	12 1-2
Swearing constable to take charge of a jury	6 1-4
Issuing execution,	50
Docketing the same,	12 1-2
Entering sheriff's return on each execution,	12 1-2
Entering satisfaction of judgment,	25
Entering the report of commissioners or referees, or the award of arbitrators, and all other special entries, for every seventy-two words,	12 1-2
For each official certificate and seal, other than the process of the court,	50
Taking bond in cases of foreign or domestic attachment,	50
Taking injunction bond in chancery,	50

Taking bond in cases of appeal to the supreme court,	50
Entering appearance of attorney but once in each suit,	12 1-2
Entering plaintiff's or defendant's appearance, but once in each cause,	12 1-2
For each attachment for a witness, or other person,	50
For each <i>venire facias</i> , or a jury warrant, when actually issued,	37 1-2
Making bill of costs for each execution, and entering the same of record, being one charge,	37 1-2
Copy of same, when requested by either party,	25
Making complete record of proceedings, and judgment, when directed by the court, for every seventy-two words,	12 1-2
Copy of bill, answer, declaration, pleadings, judgment or other proceedings, for every seventy-two words,	12 1-2
Certifying and sealing the same when requested in writing,	50
For each commission, <i>scire facias</i> or other special writ or process, and sealing the same, for every seventy-two words,	15
Taking depositions when requested, for every seventy-two words,	12 1-2
Taking acknowledgment of a sheriff's deed,	25
Entering the acknowledgment of the sheriff to a deed when made in open court,	25
Administering oath of naturalization,	25
Making entry of naturalization of record, for every seventy-two words,	15
Taking each recognizance and entering the same,	37 1-2
Arraigning a prisoner at the bar,	50
Entering the pleadings in a criminal cause,	25
For each copy of an indictment when requested, for every seventy-two words,	15
Entering judgment of conviction,	25
Entering discharge of recognizance,	12 1-2
For a copy of the list of grand or petit jurors when requested in a criminal cause,	25
For swearing jurors, witnesses and all other persons, the same fees shall be allowed as in civil cases: and in all criminal cases, where the defendant shall be acquitted, or otherwise legally discharged without payment of costs, the clerk shall receive such compensation, as the county commissioners shall order, not exceeding thirty dollars per annum.	

## CLERKS' FEES IN THE COUNTY COMMISSIONERS' COURT.

For each writ, summons, subpoena or other process, with seal,	50
Filing each paper,	6 1-4
Entering each order of court,	12 1-2
Administering each oath,	6 1-4
Each certificate and seal to any paper, other than to process,	50
Official certificate without seal,	25
For each license, and taking bond for a ferry, toll bridge or turnpike road,	1
For each tavern license, and taking bond,	1
For each marriage license,	1
For each copy of rates for a ferry, toll bridge, turnpike road or tavern,	25
Filing and recording marriage certificate,	12 1-2
Making each bill of costs, and copy,	25
For each writ of <i>ad quod damnum</i> ,	50
For copies of all records and proceedings when made out on request, for every seventy-two words,	12 1-2
Taking depositions when requested, for every seventy-two words,	12 1-2
For taking proof in cases of estrays and granting certificate of the same,	25
For registering each certificate transmitted to him by a justice of the peace, in cases of estrays,	12 1-2
For advertisements in such cases including the copy for newspaper publication,	50
For trying and sealing weights and measures by the county standard,	12 1-2
<i>Provided</i> , that no fees herein allowed shall be charged for services rendered the county: but the county commissioners' court shall, from time to time, allow their clerk such reasonable compensation per day, at each session, as they may judge proper, for his services.	

## FEES OF THE ATTORNEY GENERAL AND CIRCUIT ATTORNEYS.

For each conviction in a criminal cause, where the crime is infamous, and the offender subject to corporal punishment,	10
For each conviction, where the crime is not infamous, and the defendant is subject to fine or imprisonment only,	5

## FEES OF THE SUCCESSFUL PARTY AT LAW.

There shall be allowed to the successful party in each civil action, in the circuit and supreme court, the following docket fees, to-wit:

In each suit in which the title to lands shall come in question,	5
In each suit where the title to lands does not come in question,	2 50
In each chancery suit,	5

Which said fees shall be taxed in the bill of costs against the unsuccessful party, whether plaintiff or defendant: *Provided*, that not more than one docket fee shall be taxed against the same person in any one cause in the same court.

## SHERIFFS' FEES.

For serving a writ or summons on each defendant,	50
Taking special bail,	25
For serving a subpoena on each witness,	25
For summoning jury (grand jury excepted,) each case,	50
Advertising property for sale,	25
Returning each writ or other process,	12 1-2
Milage for each mile of necessary travel, to serve any such writ or process as aforesaid, calculating from the place of holding the court, to the place of residence of the defendant or witness, for going only,	6 1-4
Calling the jury in each cause,	12 1-2
For levying an execution,	50
Returning the same,	12 1-2
Serving and returning a <i>scire facias</i> to revive a judgment, to foreclose a mortgage or against bail,	62 1-2
For committing each person to jail,	37 1-2
Discharging each person out of jail,	37 1-2
Dieting each prisoner per day,	37 1-2
For attending before a judge with a prisoner on a writ of <i>habeas corpus</i> ,	1
For each mile of necessary travel in taking such prisoner before the judge as aforesaid,	6 1-4
Serving a writ of possession, with the aid of the <i>posse comitatus</i> ,	2
Serving the same without such aid,	1
Milage in either case, for each mile of necessary travel from the place of holding court to the place where such is served, for going only,	6 1-4

Executing a writ of <i>ad quod damnum</i> , attending the inquest, and returning the writ with the verdict of the jury,	2
For summoning a jury in a case of forcible entry and detainer, and attending the trial,	2
For attending the circuit and county commissioner's courts, to be allowed and paid out of the county treasury,	1
For summoning each appraiser to value property,	25
For swearing each appraiser when summoned,	6 1-4
For executing and acknowledging a deed, on sale of real estate,	1 50
For making certificate of sale, previous to the execution of the deed,	25
For taking a replevin, replevy or forthcoming bond,	50
For taking each bail bond or recognizance in a criminal cause, when required by law,	50
For executing a <i>capias</i> on a defendant in a criminal cause where the offence is infamous,	1
For executing a <i>capias</i> where the offence is not infamous,	50
Milage for each mile of necessary travel from the place of holding court to the place of making the arrest,	6 1-4
Serving a declaration in ejectment on each defendant and making affidavit of service,	62 1-2
Milage for each mile of travel, from the place of holding court to the place of residence of such defendants,	6 1-4
For conveying each prisoner from his own county to the jail of a foreign county, for each mile of travel, going only,	10
For committing each prisoner to jail under the laws of the United States, to be paid by the Marshal or other person requiring his confinement,	37 1-2
Dieting such prisoner per day,	37 1-2
For each month's use of the jail during the confinement of such prisoner, to be advanced as aforesaid, and paid into the county treasury,	50
For discharging such prisoner,	37 1-2
In addition to the above fees, there shall be allowed to the several sheriffs in this state, a commission of five per centum on the amount of all sales of real and personal estate, which	

## FEES.

shall be made by virtue of any execution, is, sued in pursuance of law, where the money arising from such sales shall not exceed the sum of two hundred dollars; but in all cases where the amount of any such sale, shall exceed that sum, a commission of two and a half per centum on the excess only shall be allowed: *Provided*, that in all cases, where the execution shall be settled by the parties, replevied, stopped by injunction or paid, or where the property levied upon, shall not be actually sold, only one half of the above commission shall be charged. And no other fees or compensation whatever shall be allowed on any execution, except the necessary expenses for keeping perishable property, to be ascertained and allowed by the court, out of which the same shall have issued. In all cases where any of the sheriffs in this state shall be required by law to execute any sentence of punishment, other than imprisonment, for which no fee is allowed by this act, it shall be the duty of the county commissioners' court of the proper county to allow a reasonable compensation for the same, to be paid out of the county treasury. It shall be the duty of each sheriff entitled to milage under this act, to endorse on each writ, summons, subpœna or other process, that he may execute, the distance he may travel to execute the same, ascertaining the distance, and the charge properly allowable therefor, in conformity with the foregoing regulations. In all criminal cases where the defendant shall be acquitted, or otherwise legally discharged, without payment of costs, the sheriff shall not be allowed any fees; but the commissioners' court shall annually allow the sheriff, such compensation for ex-officio services, not exceeding thirty dollars, as they shall think proper.

## CORONERS' FEES.

For holding an inquest over a dead body, when required by law, 5

For summoning the jury, 76

For burial expenses, &c. 10

All of which fees shall be certified by the coroner, and paid out of the county treasury when the same cannot be collected out of the estate of the deceased. And whenever the

## FEES.

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coroner shall be required by law to perform any of the duties appertaining to the office of sheriff, he shall be entitled to the like fees and compensation, as shall be at the time being, allowed by law to the sheriff for the performance of similar services.

## JUSTICES' FEES IN CRIMINAL CASES.

For taking each complaint in writing under oath,

25

For taking the examination of the accused and the testimony of witnesses, in cases of felony, and returning the same to the circuit court, for every seventy-two words,

12 1-2

For each warrant,

25

Taking recognizance and returning the same,

50

For each subpœna,

25

Administering each oath,

6 1-4

For each jury warrant in a trial of assualt and battery,

25

For entering the verdict of the jury,

12 1-2

For each order or judgment thereon,

25

For each mittimus,

25

For each execution,

25

For entering each appeal,

25

For transcript of judgment and proceedings in cases of appeal,

50

But in all cases where the defendant shall be acquitted or otherwise legally discharged, without the payment of costs, the justice shall not be entitled to any fees.

## JUSTICES FEES IN CIVIL CASES.

For every warrant, summons or subpœna,

18 3-4

For each continuance,

12 1-2

Administering an oath,

6 1-4

Issuing *dedimus* to take depositions,

25

Taking each deposition when required for every seventy two words,

12 1-2

Entering judgment,

25

Issuing execution,

25

Entering security on docket,

25

*Scire facias* to be served on security,

25

Notification to each referee,

25

Entering the award of referees,

37 1-2

Entering appeal from justices judgment,

25

For each transcript of the judgment and proceedings before the justice on appeal,

25

Issuing process of attachment, and taking bond and security,

75

Entering judgment on the same,	25
Docketing each suit,	12 1-2
Taking the acknowledgment or proof of a deed or other instrument of writing,	25
For each precept on forcible entry and detain- er,	50
On trial, per day,	2
Making complete copy of proceedings thereon,	2
For each jury warrant,	25
For each marriage ceremony performed,	1
For each certificate thereof,	25
For administering the oath to the finder or ta- ker up in cases of estrays, &c. making an en- try thereof, with the report of the appraisers, and making and transmitting a certificate thereof to the clerk of the county commis- sioners' court,	50

## CONSTABLES' FEES IN CRIMINAL CASES.

For serving a warrant on each person named therein,	25
Milage to be computed from the office of the justice who may have issued the same, to the place of service, for each mile,	6 1-4
Serving each subpoena,	12 1-2
Milage from the justices' office to the residence of the witness per mile,	6 1-4
Taking each person to jail when committed,	25
Milage from the justices' office to the jail per mile,	6 1-4
For summoning jury in case of assault and bat- tery,	50

But in all cases where the defendant shall  
be acquitted, or otherwise discharged, without  
the payment of costs, the constable shall not be  
entitled to any fees.

## CONSTABLES' FEES IN CIVIL CASES.

Serving and returning each warrant or sum- mons,	25
Serving and returning each subpoena,	12 1-2
Serving and returning execution,	50
Advertising property for sale,	25
Commission on sales, not exceeding ten dol- lars, ten per centum; and on all sales, exceed- ing that sum, six per centum.	
Attending trial before a justice in each jury cause,	25
Serving jury warrant, in each case,	50

Each day's attendance on the circuit court, when required, to be paid out of the county treasury,

1

Milage, when serving a warrant, summons or subpœna, from the justice's office to the residence of the defendant or witness, per mile, For serving warrant on appraisers in cases of estrays, &c.

5

25

## WITNESSES' FEES.

Every witness attending in his own county, on trial, per day,

50

Attending in a foreign county, going and returning per day, accounting 20 miles for each day's travel,

1

Every witness, when attending for the purpose of having his deposition taken, per day,

50

*Provided*, that no allowance or charge shall be made for the attendance of witnesses, as aforesaid, unless the witness shall make affidavit of the number of days he or she actually attended; and that such attendance was at the instance of one, or both of the parties, or his, her, or their attorney.

## JURORS' FEES.

To every juror sworn in each civil action in the circuit court,

25

To each juror sworn in a civil case, before a justice of the peace,

25

For attending an inquest over a dead body, when summoned by the coroner, to be paid out of the county treasury,

25

## ARBITRATORS' FEES.

To each arbitrator, for every day he shall be necessarily employed in performing the duties of his appointment, where the award is to be made the judgment of the circuit court,

2

For every arbitrator or referee, for each day he shall be necessarily employed in making up his award in cases before justices of the peace,

1

## RECORDERS' FEES.

For recording all deeds, mortgages, and other instruments of writing, for every 100 words,

15

For copies of the same, when requested, for every 100 words,

12 1-2

For every search of record,

12 1-2

Official certificate with seal, when requested,

37 1-2

For each certificate, without seal,	25
FEES OF NOTARIES PUBLIC.	
For noting a bond, promissory note, or bill of exchange for protest,	25
For protesting and recording the same,	50
For noting without protest,	25
For notice to endorsers, &c. each,	25
For affixing the seal notarial,	25
For each certificate,	25

## COUNTY SURVEYORS' FEES.

For establishing each quarter section of land,	2 50
For establishing each half-quarter section of land,	2
For each town lot over ten, and not exceeding forty in number,	37 1-2
For each town lot over forty, and not exceeding one hundred,	25
For each lot over and above one hundred,	18 3-4
For laying off land, under a writ of <i>ad quod damnum</i> ,	2 50

And each surveyor shall be allowed the sum of two dollars per day, in full compensation for travelling expenses, when necessarily engaged in the discharge of the duties of his office.

## FEES FOR GUARDING JAIL.

To each man, for every twenty-four hours guarding jail when required, on producing the jailer's, sheriff's, coroner's or justice's of the peace certificate of the same, to be paid out of the county treasury,

1

And to the end that all persons chargeable with the fees aforesaid, due to the several above named officers, (except such as are to be paid by the respective counties,) may certainly know for what the same are charged, none of the fees herein before mentioned, shall be payable to any such officer, until a bill of the same shall have been presented to the person chargeable with the same, stating the particulars of the said bill, and signed by the officer to whom the same are payable; or until a fee bill shall have been issued by the clerk, as hereinafter provided.

Officers to present a fee bill.

Penalty for taking illegal fees.

SEC. 7. If any or either of the aforesaid officers shall charge, claim, demand, exact, or take any other or greater fees than are hereinbefore set down and allowed for any of the services specified in this act; or shall charge, demand, or take any of the said fees when the services for which such fees are charged, shall not have been actually performed, such officer shall pay to the party injured two dollars for every item so charged and exacted; to be sued

for and recovered in any court having cognizance of the same: *Provided, always,* that if any person against whom *Proviso* any fee bill, within this act, shall be charged, shall conceive himself or herself aggrieved by any such charges, that the same is overcharged, or contains charges for services not actually rendered by such officer, it shall be lawful for such person, after paying the same, or having replevied the said fee bill, by giving bond with sufficient security, to pay the same at the next ensuing circuit court of his county, (and it shall be the duty of the sheriff, or other officer, to take such bond and allow said replevin,) to present the said fee bill to the circuit court of the county where the person so charged therewith shall reside; whose duty it shall be to inspect the said fee bill; and if it appear, that any item or charge is contained in said fee bill not authorized by law, or for services not actually rendered, the said judge shall proceed to quash such fee bill and bond, if one be given, and if the money has been collected thereon, he shall order the clerk to restore the same, and shall impose a fine on such clerk, in favor of the party injured, of not less than one dollar, nor more than three dollars, for every item erroneously charged in said fee bill by said clerk; and shall grant to the party injured, process of attachment, to recover back the amount of such fee bill, when paid, and also the fine or fines so imposed; but if it shall appear to the said judge, that such fee bill is correct, the party charged with the same, shall pay to such clerk, an interest on the amount of such bill at the rate of ten per centum per annum, from the time of the delivery of such bill till the same be paid.

SEC. 8. The clerks of the supreme and circuit courts shall, at or after every term of their respective courts, make and set down, in a book to be kept for that purpose, a fee bill in each cause, in which costs shall have been adjudged, including the costs of sheriff's and other officers of court, setting down the costs of the plaintiff and defendant, which book shall be a public record; and for the purpose of collecting such costs, it shall and may be lawful for such clerk, and it is hereby made his duty, when required by any officer of the court, interested in the same, to make out a copy or transcript of such bill of costs, and deliver the same to the sheriff of the county where the person or persons chargeable with the same, shall reside or have property; which fee bill, so issued, shall have the force and effect of an execution, and be collected in the same manner: *Provided,* nothing herein contained shall be so construed, as to prevent the collection of such costs by execution, on final judgments.

Sheriff's duty  
relative to fee  
bills

SEC. 9. If any sheriff or other officer, to whom any such fee bill shall have been delivered, shall neglect to make return thereof, or to pay the amount of such fee bill, except his own fees, it shall and may be lawful, for any party interested in such fee bill, to obtain a rule of court against such sheriff or other officer, and proceed against him by attachment, and recover the same according to the rules and practice of the court where such costs may have accrued.

Contents of a  
record of the  
Supreme  
Court

SEC. 10. Whenever any clerk of any circuit court of this state, shall be required to certify the records of the proceedings below to the supreme court, such record shall only contain the declaration, writ or summons, plea, demurrer, rejoinder, or other pleadings in the suit, together with the judgment of the court below, given thereupon, unless such clerk shall be especially directed by the court, or the counsel for either party, to insert in the body of such record such other pleadings or papers, as the court or parties may deem material to the matter in controversy; and if any such clerk shall insert in such record, others than those aforesaid, or such as he may be especially instructed to insert, he shall not be entitled to receive any fee for such paper or pleading as aforesaid.

Where sheriffs have not collected fee bills how to proceed

SEC. 11. Any person who has heretofore been, or who is at this time the sheriff of any county in this state, and in whose hands the clerks of their respective counties, have, agreeably to the statute of this state, in such cases made and provided, put their fees for collection, and which fees, the sheriffs, as aforesaid, have not collected, are hereby as fully authorized to go on and make such collections, as if they had done so in strict conformity with the law; together with all fees which may be due to them for services as sheriffs rendered: *Provided*, that the division of no county shall, in any instance, interfere with such collections.

Stationary and  
furniture for  
the supreme  
and circuit  
courts

SEC. 12. The clerks of the circuit and county commissioners' courts, shall provide all the necessary books for their respective offices; and a safe press or presses, with locks and keys for the safe keeping of the archives of their respective offices; and the county commissioners' courts, shall make allowances for the same, and for articles of stationary necessary for their respective courts, out of the county treasury, from time to time; and the clerk of the supreme court, shall also procure the necessary books, stationary, and presses for the safe deposite of the archives of his office, which shall be certified by the said court to the auditor of public accounts, who shall draw a warrant or warrants on the state treasury for the amount of the same.

SEC. 13. It shall be the duty of the county commissioners' court, in each county, as soon as the same shall be practicable, to cause a suitable room or rooms to be provided, at the court house in their respective counties, for the offices of the clerks of the circuit courts, and county commissioners' courts; and when the same shall be so provided, the clerks shall keep their offices at the place so provided.

SEC. 14. In all cases on judgments, on which execution may or shall hereafter issue, from any court of record, the clerk of the court from which the same shall issue, shall at the time of issuing thereof, make out under his signature, and deliver to the sheriff or coroner, as the case may be, with the execution, a detailed bill of the costs in the said suit, from its commencement to its termination, in order that the party paying the same, may certainly know, with and for what, he is chargeable; which said bill, the said officer to whose hands the execution may so come, shall deliver to the party against whom the execution may be; and upon his replevylng or paying the same, together with his certificate thereon, that the same was so replevied or paid by the said person.

Cost bills to go with the execution.

SEC. 15. Should any officer concerned in issuing or executing any execution, hereafter to be issued as aforesaid, fail in the duty enjoined on him, in the preceding section hereof, he shall forfeit and pay to the party injured, the sum of fifty dollars with costs, to be recovered in any court of record in this state, and no imparlance or delay shall be allowed therein.

Penalty for omission.

SEC. 16. The clerks of the several courts aforesaid, judges of probate, and justices of the peace respectively, shall be required to set up in some conspicuous place in each of their offices, and there continually keep, a fair and complete table of their fees, allowed by this act; and if any such officer shall fail to comply, with the provisions of this section, within three months after this act shall take effect, or shall, at any time thereafter, for ten days together, not have such table continually kept up as aforesaid, he shall forfeit and pay for every such neglect, the sum of ten dollars, to be recovered before any justice of the peace of the proper county, to the use of any person or persons, who may inform and sue for the same.

Clerks to set up in their offices their fees as allowed by law.

SEC. 17. All laws and parts of laws, which may have heretofore required the clerks of the supreme and circuit courts to make up complete records, except in cases where the title to lands shall come in question, and in capital criminal cases; or where such clerks shall be directed by one of the parties concerned, to make the same.

Acts repealed.

shall be, and they are hereby repealed; and if in any cause, where the clerk is not required by law, either party shall require a complete record, the party so requiring it, shall pay the cost of the same.

Old clerks allowed to collect their fees

Acts repealed

The clerks of the several circuit courts of this state, heretofore appointed by the late circuit judges, may in all things proceed to collect their fees by fee bill, in the manner provided in this act for other clerks; and may, for that purpose examine any fee book, or record, in any of said courts; and all other acts and parts of acts, coming within the purview of, or repugnant to this act, be, and the same are hereby repealed: *Provided*, that nothing in this act contained, shall be so construed as to prevent the recovery of salaries, fees and compensation, which are now due and payable, or which may become so before this act takes effect, in the manner prescribed by the several acts hereby altered and repealed: *Provided, also*, that the act, entitled "An act concerning public officers, and the payment of money out of the state treasury, approved January 25, 1826," be and the same is hereby repealed. The 1st, 2d, 3d, and 4th sections of this act, to take effect from and after its passage; the remainder thereof, on the first day of June next.

[Approved, 19th Feb. 1827.]

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## FERRIES, TOLL BRIDGES, &c.

In force Feb.  
12, 1827

*AN ACT to provide for the establishment of Ferries, Toll Bridges and Turnpike Roads.*

County commissioners may establish ferries and toll bridges

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That whenever it shall be considered necessary to establish a ferry or toll bridge across any lake, river, creek or other water course, within the limits or upon the borders of this state, or to turnpike or causeway any public road or highway, it shall be the duty of the county commissioners' court of the proper county, on due application being made by any qualified person or persons, to establish and confirm the same by a special order to be made for that purpose, under such regulations, restrictions, and forfeitures, as are hereinafter directed and pointed out: Provided, that no such application shall avail any such person or persons as aforesaid, unless his, her or their intention in relation thereto, shall have been previously published in some public newspaper printed in this state, or advertised on the door of the court*

house, and in three other of the most public places in the county, in which such ferry, toll bridge, or turnpike road is proposed to be established, for at least four weeks successively, next preceding the sitting of the court at which the same shall be made: *And provided further*, that the proprietor or proprietors of the lands adjoining to, or embracing such water course as aforesaid, over which any such ferry or toll bridge shall be proposed to be established as aforesaid, or where any such turnpike road shall pass as aforesaid, shall at all times have the preference in establishing or erecting the same, in all cases where application shall be made for that purpose, before such privilege shall have been granted to any other person or persons as aforesaid.

SEC. 2. When any ferry, toll bridge, or turnpike road, <sup>When estab-  
lished, a li-  
cense to issue</sup> shall be established as aforesaid, it shall be the duty of the court establishing the same, to direct their clerk to issue to the proprietor or proprietors thereof, a license, under the seal of such court, to keep the same according to law: *Provided*, that every such proprietor or proprietors, as aforesaid, to whom any such license may be directed to be issued, as aforesaid, shall before the issuing thereof, pay into the county treasury, or to such person or persons as shall be authorized to receive the same, the amount of the first year's tax, which may be assessed upon such ferry, toll bridge or turnpike road by said court, and specified in the order establishing the same, and enter into bond with one or more sufficient securities, to be approved by the court, in a sum not less than one hundred, nor more than five hundred dollars, payable to the county commissioners of the proper county, and their successors in office, for the use of such county, with a condition therein contained, that he, she, or they will keep such ferry, toll bridge or turnpike road according to law; and if default shall at any time be made, in the condition of said bond, damages not exceeding the penalty therein mentioned, may be sued for, and recovered in the name of the county commissioners for the use of the county, wherein such ferry, toll bridge or turnpike road, shall have been established in any court having competent jurisdiction.

SEC. 3. Each ferry keeper shall be furnished and provided with a good tight boat, or boats, if more than one be necessary, and other small craft of sufficient number, dimensions, strength and steadiness, for the safe and speedy transportation of all passengers, their teams, horses, cattle and other animals, as well as their goods, chattels and effects; and the said boat or boats and other small craft, shall at all times be well furnished with suitable oars, set- <sup>Duty of ferry  
keepers</sup>

ting poles, rigging and other implements, necessary for the service thereof; and also with men of sufficient number, strength, discretion and skill, to manage the same; and such ferry keeper shall, at all times keep the places of embarking and landing, in good repair, by cutting away the banks and erecting wharves and causeways when necessary, so that passengers, their teams, horses, cattle and other property, may be embarked and landed without danger or unnecessary delay.

**SEC. 4.** Every keeper of a toll bridge or turnpike road, shall in like manner, be required to keep the same at all times, in good repair, so as to afford a safe and speedy passage to all persons, their teams, horses, cattle, and other animals, who may have occasion to use the same.

Duty of toll  
bridge and  
turnpike keep-  
ers

Further duty

**SEC. 5.** Every keeper of a ferry, toll bridge or turnpike road as aforesaid, shall give constant and diligent attention to the same, from day light in the morning until dark in the evening of each day, and shall give passage to all public messengers and expresses; to all grand and petit jurors, when going to and returning from court, without any fee or reward whatever: *Provided*, that no messenger or express shall be considered as being sent on public service, within the meaning of this act, unless he shall have been dispatched by a commander in chief, major or brigadier general, colonel, lieutenant-colonel, major or commandant of some military post or establishment, to the governor or commander in chief of the militia of this state, or *vice versa*; and the dispatch carried by such messenger or express, be endorsed "on public service," and signed by the officer sending the same.

Their liability

And all such keepers of ferries, toll bridges and turnpike roads, as aforesaid, shall also be obliged at any hour of the night, if required, except in cases of evident danger, to give passage to all public messengers and expresses as aforesaid; and also, to all other persons requiring the same, on their paying or tendering double the rate of ferrage or toll allowed to be taken during the day time. And if any such keeper of a ferry, toll bridge, or turnpike road, as aforesaid, shall at any time neglect or refuse to give passage to such person or persons, or their property as aforesaid, he or she so offending, shall forfeit and pay five dollars for every such offence, to the party aggrieved, before any justice of the peace of the county wherein such offence shall be committed, and shall also be liable to an action on the case for any special damage, which any such person may sustain in consequence of such neglect or refusal. But no ferryman shall be required to put off from shore, or to attempt to pass any such water course as

aforesaid, when it manifestly appears to be hazardous so to do, by reason of any flood, storm, tempest or ice; nor shall any keeper of a ferry, toll bridge or turnpike road, as aforesaid, be compellable (except as is hereinbefore excepted) to give passage to any person or persons, or to his, her or their property as aforesaid, until the fare or toll, properly chargeable by such keeper, shall have been fully paid or tendered, and every juryman, to entitle him to the benefit of this section, shall produce to the ferry keeper, &c. the certificate of the sheriff of his county, that he has been duly summoned to serve on the grand or petit jury at the term of the court, to or from which he is going.

Not liable unless paid in advance

Sec. 6. The county commissioners' courts in their respective counties, are authorized and required to fix, from time to time, the rates, fare or toll, which each keeper of any ferry, toll bridge or turnpike road, shall hereafter demand, for the passage of all persons, wagons, carts, carriages, horses, cattle, sheep, hogs and other property, having due regard to the breadth and situation of the stream or water course, over which such ferry or bridge shall be established, the dangers and difficulties incident thereto, the length, breadth and quality of the road, and the publicity of the place at which the same shall have been established. And every such keeper of a ferry, toll bridge, or turnpike road, as aforesaid, who shall at any time demand and take more than the fare or toll, so stated and allowed as aforesaid, shall forfeit and pay to the party aggrieved, for every such offence, the sum of five dollars, over and above the amount which shall be thus illegally demanded and taken, to be recovered before any justice of the peace, of the county wherein such offence shall be committed.

Commiss'rs, courts to fix the rates, &c.

Sec. 7. Each keeper of a ferry, toll bridge or turnpike road, which now is, or shall hereafter be established in this state, shall be required to set or post up in some conspicuous place, immediately adjoining his or her ferry landing, toll bridge or turnpike gate, a painted, printed, or written list, of the several rates or fares, which shall be chargeable at such ferry, toll bridge, or turnpike gate, so that the same shall not exceed those which shall from time to time be allowed by law; which said list of fares or rates as aforesaid, shall at all times be painted, printed, or written, in a plain legible manner, and posted up so near the place or places where persons shall pass across such ferry, toll bridge, or turnpike road, as aforesaid, that the same shall be open and legible to all such passengers: And if at any time, any such keeper, as aforesaid, shall refuse or neglect to put up such list of rates or fares as aforesaid, it shall not be lawful to charge any ferriage or

Ferry keepers to post up their rates in some conspicuous place

## FERRIES, TOLL BRIDGES, &amp;c.

toll, or to take any compensation whatever, at any such ferry, toll bridge, or turnpike gate during such delinquency.

SEC. 8. All persons shall be received into such ferry boats, or other vessels as aforesaid, and conveyed across the water course, over which the same shall be established, according to their arrival or first coming to the said ferry: And if any ferry keeper shall act contrary to this regulation, he shall forfeit and pay the sum of three dollars for every such offence to the party aggrieved, recoverable before any justice of the peace of the county wherein such offence shall have been committed: *Provided*, that all public officers, and such as go on public or urgent occasions, as post riders, couriers, physicians, surgeons and midwives, shall in all cases be the first carried over, where all cannot go at the same time.

Liability for  
no conform-  
ing to this act

SEC. 9. The owner or owners, keeper or keepers, at all ferries and toll bridges, which now are, or hereafter shall be established by law, and kept agreeably to this act, shall have the exclusive privilege of the transportation or passage of all persons, their teams, horses, cattle and other property, over or across the same, and be entitled to all the fare by law arising therefrom: *Provided*, that nothing herein contained, shall be construed to prevent any person or persons from crossing any stream or water course, over which any such ferry or toll bridge shall be established, as aforesaid, in his or her own boat or other craft, on his or her own business; and also to take in, and cross his neighbors, where the same is done without fee, and not with intention to injure any ferryman near.

Proviso

Ferries on  
Ohio river,  
how regula-  
ted

SEC. 10. All ferries heretofore established and confirmed, over the river Ohio, to the proprietor or proprietors of land on the western shore of said river by the county commissioners' courts, of any of the counties bounded by, or situate upon said river, as well as all other ferries and toll bridges, which have at any time been established over any other of the lakes, rivers, creeks, or other water courses, within the limits or upon the borders of this state, and where the same have been kept in operation, or repair, from time to time, according to law; and have not at any time since their establishment, been discontinued or abandoned, shall be, and they are hereby declared to be established ferries and toll bridges, within the meaning of this act.

No person  
permitted to  
run a ferry  
boat within  
three miles of  
an established  
ferry

SEC. 11. If any person or persons, except those whose ferries or toll bridges, are established and confirmed by this act, or shall hereafter be established and licensed by some county commissioners' court under the provisions of this act, shall at any time run any boat or boats, or other

craft, for the purpose of conveying passengers, or their property across any such water course, as aforesaid, within three miles of any ferry or toll bridge, which now is, or hereafter shall be established as aforesaid, except as is hereinbefore allowed, he, she, or they so offending shall forfeit every such boat or boats, or other craft to the owner or proprietor of the ferry or toll bridge, within three miles of which, the same shall be run as aforesaid; and the owner or proprietor of such ferry or toll bridge, may, at any time after such forfeiture shall have accrued, enter upon, and take possession of such boat or boats, or other craft, to his or her own use; and such offender shall, moreover, pay to the proprietor of such ferry or toll bridge, as aforesaid, who may be aggrieved as aforesaid, the sum of fifteen dollars for each person, who may be thus unlawfully carried or conveyed across any such water course as aforesaid, to be recovered by motion before any justice of the peace of the proper county, upon giving to such offender five days notice of the time and place of making such motion; which notice may be served on such person or persons, either in or out of the state, by delivering or tendering a copy thereof.

SEC. 12. For the encouragement of ferry keepers, and the keepers of the gates of toll bridges and turnpike roads, and in consideration of their giving a free passage to public messengers, and others, exempted by this act, all men necessarily attending on ferries, toll bridges, or turnpike gates, in this state, shall be free from military duty, opening and repairing highways, so far as personal service is required, and from serving on juries.

SEC. 13. If any ferry or ferries, which now are, or hereafter may be established as aforesaid, shall not be furnished with a sufficient boat or boats, or other craft, with the necessary oars, setting poles, rigging, and other implements for the service thereof; and also with a sufficient number of able bodied and skilful ferrymen, as is provided in the third section of this act, within three months from the establishment thereof, or if any toll bridge, or turnpike road, which now is, or hereafter shall be established as aforesaid, shall not be erected and completed agreeably to the terms and conditions, imposed by the county commissioners' court, within twelve months after the establishment thereof, or of any such ferry, toll bridge, or turnpike road, shall not at any time hereafter, be kept in good condition and repair, agreeably to the provisions of this act, or if the same shall at any time be abandoned, disused, or unfrequented for the space of six months, it shall and may be lawful for the county commissioners'

Ferry and toll  
gate keepers  
exempted  
from militia  
duty, working  
on roads and  
serving on ju-  
ries

Ferries to be  
well furnished  
with boats

License for  
ferries revo-  
kable

court, of the proper county, on complaint being made, to summon the proprietor or proprietors of such ferry, toll bridge or turnpike road, to shew cause why the same should not be discontinued, and their license revoked; and decide thereon according to the testimony adduced, and as shall be agreeable to equity and justice; which decision, when made, shall be valid in law to all intents and purposes, but subject to appeal to the circuit court, as in other cases.

SEC. 14. All ferries, toll bridges and turnpike roads, which now are, or hereafter may be established as aforesaid, shall be subject to an annual tax of not less than two, nor more than one hundred dollars, in the discretion of the county commissioners' court of the county, in which the same shall be located; which tax, when assessed, shall be collected and paid over as other taxes are, and shall constitute a part of the county revenue.

Counties may  
purchase toll  
bridges and  
turnpike  
roads

SEC. 15. If the county in which any toll bridge or turnpike road shall be established and erected as aforesaid, shall, at any time, pay, or cause to be paid to the proprietor or proprietors thereof, the original cost of such toll bridge or turnpike road as aforesaid, with ten per cent. interest thereon, then the said bridge or road shall cease to be private property, and shall become a public bridge or highway.

Persons not  
allowed to  
keep a ferry,  
&c. without a  
license

SEC. 16. No person shall establish, keep, or use any ferry, toll bridge, or turnpike road as aforesaid, for the conveyance or passage of persons and their property as aforesaid, for profit or hire, unless he or she shall be licensed as directed by this act, under the penalty of five dollars for each offence, recoverable before any justice of the peace of the county wherein such offence shall be committed; the one half thereof, shall go to the person suing for the same, and the other half to the county; and if any person or persons, not licensed as aforesaid, shall, at any time, pass any person or persons, or their property, as aforesaid, except as provided in the ninth section, over any lake, river, creek, or other water course, where any ferry or toll bridge shall at the time be established and kept as aforesaid, or within three miles thereof, either with or without compensation, with intent to injure the keeper or proprietor of such ferry or toll bridge, he, she or they, shall incur the same forfeitures, and may be proceeded against in the same manner as is provided in the eleventh section: *Provided*, that it shall not be considered illegal for any person or persons to pass any person or his property without compensation, in cases where it shall be made to appear that such established ferry or toll bridge was not, at the time, in actual operation, or in sufficient repair to have

Proviso

afforded to such person or his property, a safe and speedy passage.

SEC. 17. That the act, entitled "An act to establish and regulate ferries," approved February 20th, 1819; the act, entitled "An act to amend an act, entitled an act to establish and regulate ferries," approved February 20th, 1819, approved February 9th, 1821; the act, entitled "An act to amend an act, entitled an act to establish and regulate ferries," approved January 10th, 1825; the act, entitled "An act authorizing the county commissioners to grant licenses for the erection of toll bridges and turnpike roads," approved March 27th, 1819; and all other acts, and parts of acts, coming within the purview of, or repugnant to this act, be, and the same are hereby repealed: *Provided, always,* that nothing in this act contained, shall be construed to interfere with, infringe, restrict or impair any of the rights or privileges, which have been heretofore granted and confirmed to any person or persons, by virtue of any former law of this state. This act to take effect from and after its passage.

[Approved, Feb. 12, 1827.]

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## FERRIES, &c.

*AN ACT supplemental to an act, entitled "An act to establish and regulate Ferries, approved February 20th, 1819."* In force 12th Feb. 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That the ferries here-  
Ferries over the Ohio river established tofore established and confirmed over the river Ohio, to the owner or owners of land on the western shore of said river, by the county commissioners' court of any of the counties bounded by, or situate upon said river, are hereby declared to be established ferries, any thing in the act to which this is a supplement, approved February 20, 1819, notwithstanding.

SEC. 2. The county commissioners' court of the several counties, which now are, or hereafter may be, situated on the river Ohio, shall have full power and authority to grant and confirm to the proprietors of land on the western shore of said river, the right to ferry over said river: *Provided,* that no ferry shall be granted over said river, within three miles of any established ferry.

SEC. 3. If any person or persons except those whose ferries are confirmed and established by this act, or shall hereafter be granted and confirmed by some county com-

Com'r's courts of counties on that river have certain extra power relative to ferries thereon

No person allowed to ferry except present owners

## FORCIBLE ENTRY AND DETAINER.

missioners' court, under the provisions of this act, shall run any boat or boats, for the purpose of conveying passengers across said river Ohio, within three miles of any ferry established and confirmed by this act, or which may be granted and confirmed by any county commissioners' court, under the provisions of this act, he, she, or they shall forfeit every such boat or boats, to the owner of the ferry, within three miles of which such boat or boats shall be run as aforesaid; and the owner of such ferry may enter upon, and take possession of said boat or boats for his own use; and such offenders shall moreover pay to the owner of such ferry, within three miles of which said boat or boats shall be run, the sum of fifteen dollars, for every person carried or conveyed over said river in such boat or boats, to be recovered before any justice of the peace, in the proper county, by motion, upon giving such offender or offenders five days notice of the time and place of making such motion; which notice may be served on such person or persons, at any place, either in or out of the state, by delivering or tendering a copy thereof.

SEC. 4. And it shall and may be lawful for the proprietor or proprietors of ferries, established, or which may be established, by authority of this act, their heirs and assigns, to demand and receive from passengers, and other persons, such rates of toll as shall from time to time be established by the county commissioners' court of the respective counties, in which such ferries may be situate.

SEC. 5. The ferries which are, or may be established by authority of this act, shall be subject to the same taxes as now are, or may hereafter be imposed on other ferries in this state, and under the same regulations and forfeitures. This act to take effect from and after its passage.

[Approved, Feb. 12, 1827.]

Com'r's court  
to fix the rate  
of ferriage

Ferries here-  
after establish-  
ed

In force June  
1, 1827.

What deem-  
ed forcible en-  
try and de-  
tainer

## FORCIBLE ENTRY AND DETAINER.

*An Act concerning forcible Entry and Detainer.*

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That if any person shall make any entry into any lands, tenements, or other possessions, except in cases where entry is given by law, or shall make any such entry by force; or if any person shall wilfully, and without force, hold over any lands, tenements, or other possessions, after the determination of the time, for which such lands, tenements, or possessions were*

let to him, or to the person under whom he claims, after demand made in writing for possession thereof, by the person entitled to such possession, such person shall be adjudged guilty of a forcible entry and detainer, or of forcible detainer, as the case may be, within the intent and meaning of this act.

SEC. 2. Any two justices of the peace, of any county in this state, shall have jurisdiction of any case arising under this act, and, on complaint, upon oath, of the party grieved, shall issue their summons, directed to the sheriff, (or coroner, if the sheriff be interested,) of their county, commanding him to summon the person against whom the complaint is made, to appear before such justices at a time and place to be stated in such summons, not more than twelve, nor less than six days from the time of issuing such summons, and which shall be served at least five days before the return day thereof, by reading the same to the defendant, or leaving a copy at his place of abode; and the said justices shall, also, at the same time, issue a precept to the sheriff or coroner, commanding him to summon a jury of twelve good and lawful men of the county, to appear before them, at the return of such summons, to hear and try the said complaint. And if any part of the jurors shall fail to attend, or be challenged, the said justices may order the sheriff or coroner to complete the number, by summoning and returning others forthwith.

SEC. 3. The sheriff or coroner shall return to the said justices the summons and precept aforesaid, on the day assigned for trial, and shall state on the back of said summons, how the same was served, and on the back of said precept, a list of the names of the jurors. And if the defendant does not appear, the justices shall proceed to try the said cause, *ex parte*, or may, in their discretion, postpone the trial for a time not exceeding ten days; and the said justices shall also issue subpœnas for witnesses, and proceed in the trial of said cause, as in other cases of trial by jury.

SEC. 4. No indictment or inquisition shall be necessary in any case arising under this act, but the justices shall set down in writing the complaint, under oath, particularly describing the lands, tenements or possessions in question, and shall keep a record of the proceedings had before them; and if the jury shall find the defendant guilty, they shall give judgment thereon, for the plaintiff to have restitution of the premises, and his costs, and shall award their writ of restitution; and if a verdict be given for the defendant, judgment shall be given against the plaintiff for costs, and execution issued therefor.

Two justices  
of the peace  
to have jur-  
isdiction of all  
causes under  
this act

How to pro-  
ceed to sum-  
mon a jury

Sheriff's duty

If defendant  
does not ap-  
pear justice to  
proceed ex-  
parte

Justices to  
keep a record  
of the proce-  
dings

Appeals allowed, if taken within five days

No writs of restitution or execution to be issued

Acts repealed

SEC. 5. If either party shall feel aggrieved by the verdict of the jury, or the decision of the justices, on any trial had under this act, he or she may have an appeal to the circuit court, to be obtained in the same manner and tried in the same way as appeals from justices of the peace in other cases; and if the appeal be taken within five days after the trial had before the justices, no writ of restitution or execution shall be issued by them; and the circuit court, on giving judgment for the plaintiff, shall award a writ of restitution and execution for costs, including the costs before the justices; and if judgment be for the defendant, he shall recover costs, in like manner, and have execution for the same.

SEC. 6. This act repeals "An act against forcible entry and detainer, approved February 24, 1819, but rights acquired under that act are not hereby affected. This act shall take effect on the first day of June next.

[Approved, Feb. 2, 1827.]

In force Feb.  
16, 1827

## FRAUDS AND PERJURIES.

### *AN ACT for the prevention of Frauds and Perjuries.*

What agreements void if not in writing

SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That no action shall be brought, whereby to charge any executor or administrator, upon any special promise, to answer any debt or damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage, or upon any contract for the sale of lands, tenements or hereditaments, or any interest in, or concerning them, for a longer term than one year, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto, by him lawfully authorized.

Contracts, &c

SEC. 2. Every gift, grant or conveyance of lands, tenements, hereditaments, goods or chattels, or of any rent, common or profit of the same, by writing or otherwise; and every bond, suit, judgment or execution, had and made, or contrived of malice, fraud, covin, collusion, or guile, to the in-

tent or purpose to delay, hinder or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures, or to defraud or deceive those who shall purchase the same, lands, tenements or hereditaments, or any rent, profit or commodity out of them, shall be from thenceforth deemed and taken, only as against the person or persons, his, her or their heirs, successors, executors, administrators or assigns, and every of them, whose debts, suits, demands, estates and interests by such guileful and covinous devices and practices as aforesaid, shall or might be in any wise disturbed, hindered, delayed, or defrauded, to be clearly and utterly void; any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding; and moreover, if a conveyance be of goods and chattels, and be not on consideration deemed valuable in law, it shall be taken to be fraudulent within this act, unless the same be by will, duly proved and recorded, or by deed in writing acknowledged, or proved, if the same deed includes lands also, in such manner as conveyances of land are by law directed to be acknowledged or proved; or if it be goods and chattles only, then acknowledged or proved by two witnesses, before any court of record in the county wherein one of the parties lives, within eight months after the execution thereof, or unless possession shall really and *bona fide* remain with the donee. And in like manner where any loan of goods and chattles shall be pretended to have been made to any person, with whom or those claiming under him, possession shall have remained for the space of five years, without demand made and pursued by due process at law, on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of an use, or property by way of condition, reservation, remainder or otherwise, in goods or chattles, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to creditors and purchasers of the person aforesaid, so remaining in possession, to be fraudulent within this act, and that the absolute property is with the possession, unless such loan, reservation or limitation of use or property, were declared by will or deed in writing, proved and recorded as aforesaid.

SEC. 3. This act shall not extend to any estate or interest in any lands, goods or chattles, or any rents, common or profit, out of the same, which shall be upon good consideration, and *bona fide* lawfully conveyed, or assured to any person or persons, bodies politic or corporate.

SEC. 4. All declarations or creations of trusts or confidences of any lands, tenements or hereditaments, shall

Conveyance  
of goods, chat-  
tles, &c.

When posses-  
sion de-  
med  
evidence of  
fraud

To what this  
act extends

Creations of  
trusts how  
proved

be manifested and proved, by some writing signed by the party, who is by law enabled to declare such trust, or by his last will in writing; or else they shall be utterly void and of none effect: *Provided*, that resulting trusts, or trusts created by construction, implication or operation of law, need not be in writing, and the same may be proved by parol.

[Approved, Feb. 16, 1827.]

In force June  
1, 1827

## FUGITIVES FROM JUSTICE.

### *AN ACT concerning Fugitives from Justice.*

Fugitives  
from other  
states how ap-  
prehended

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly, That whenever the executive of any other state, or of any territory of the United States, shall demand of the executive of this state any person as a fugitive from justice, and shall have complied with the requisitions of the act of congress in that case made and provided, it shall be the duty of the executive of this state to issue his warrant under the seal of the state, to apprehend the said fugitive, directed to any sheriff, coroner, or constable of any county of this state, or other person whom the said executive may think fit to entrust with the execution of said process: any of the said persons may execute such warrant any where within the limits of this state, and convey such fugitive to any place within this state, which the executive in his said warrant shall direct.*

Fugitives  
from this  
to other states  
how to pro-  
ceed

SEC. 2. Whenever the executive of this state shall demand a fugitive from justice from the executive of any other state, he shall issue his warrant, under the seal of the state, to some messenger, commanding him to receive the said fugitive, and convey him to the sheriff, of the proper county where the offence was committed.

Expenses,  
how paid

SEC. 3. The expenses which may accrue under the two foregoing sections being first ascertained to the satisfaction of the executive, shall on his certificate be allowed and paid out of the state treasury, on the warrant of the auditor.

Person  
charged with  
commission  
of offences  
how to ap-  
prehended

SEC. 4. Whenever any person within this state shall be charged upon the oath or affirmation of any credible witness, before any judge or justice of the peace, with the commission of any murder, rape, robbery, burglary, arson, larceny, forgery, or counterfeiting, in any other state or territory of the United States; and that the said person

hath fled from justice, it shall be lawful for the said judge or justice to issue his warrant for the apprehension of said person. If upon examination it shall appear to the satisfaction of such judge or justice, that the said person is guilty of the offence alleged against him, it shall be the duty of the said judge or justice to commit him to the jail of the county; or if the offence is bailable, according to the laws of this state, to take bail for his appearance at the next circuit court to be holden in that county. It shall be the duty of the said judge or justice to reduce the examination of the prisoner and those who bring him, to writing, and to return the same to the next circuit court of the county where such examination is had, as in other cases, and shall also send a copy of the examination and proceedings to the executive of this state, so soon thereafter as may be. If in the opinion of the executive of this state, the examination so furnished, contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the state or territory, where the crime is alledged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand; when such demand shall be made, the executive of this state shall forthwith issue his warrant under the seal of the state to the sheriff of the county where the said person is committed or bailed, commanding him to surrender him to such messenger as shall be therein named, to be conveyed out of this state. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith, any where within the state, and to surrender him agreeably to said warrant.

Committing magistrate, to reduce the examination of prisoner to writing

Sec. 5. In cases where the party shall have been admitted to bail, and shall appear at the circuit court according to the condition of his recognizance, and no demand shall have been made of him, it shall be in the power of the said court to discharge the said recognizance or continue it according to the circumstances of the case; such as the distance of the place where the offender is alledged to have been committed, the time that hath intervened since the arrest of the party, the strength of the evidence against him. In no case shall such person be held in prison or to bail, longer than till the end of the second term of the circuit court after his caption. If no demand be made upon the sheriff for him within that time, he shall be discharged from prison or exonerated from his recognizance, as the case may be.

The party appearing at court and no demand may be discharged

## FUGITIVES FROM JUSTICE.

SEC. 6. If the recognizance shall be forfeited, it shall enure to the benefit of the state.

Persons com-  
plaining against  
fugitives to give  
bond for costs

SEC. 7. In all cases where complaint shall be made as aforesaid against any fugitive from justice, it shall be the duty of the judge or justice to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive; which security shall be by bond, to the clerk of the circuit court, conditioned for the payment of costs as above; which bond, together with a statement of the costs, which may have accrued on the examination, shall be returned to the office of the clerk of the circuit court; and upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee bill as in other cases, to be served on the parties named in the bond, or any one of them; which fee bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid on or before the first day of the next circuit court to be helden in and for that county, nor any cause then shewn why they should not be paid, the clerk may issue an execution for the same against those parties on whom the fee bill has been served; and when the said fees are collected, shall pay over the same to the persons respectively entitled thereto. The clerk shall be entitled to fifty cents for his trouble in each case, besides the usual taxed fees which are allowed in other cases for like services: Nothing herein contained shall prevent the clerk from instituting suits on said bonds in the ordinary mode of judicial proceedings, if he shall deem it proper.

Governor may  
offer rewards  
when prison-  
ers escape, or  
secret them-  
selves when  
charged with  
certain offences

SEC. 8. If any person charged with, or convicted of treason, murder, rape, robbery, burglary, arson, larceny, forgery or counterfeiting, shall break prison, escape, or flee from justice, or abscond and secrete himself; in such cases it shall be lawful for the governor, if he shall judge it necessary, to offer any reward not exceeding two hundred dollars, for apprehending and deliverng such person into the custody of such sheriff or other officer, as he may direct. The person or persons so apprehending and delivering any such person as aforesaid, and producing to the governor, the sheriff or justices' receipt for the body, it shall be lawful for the governor to certify the amount of such claim to the auditor, who shall issue his warrant on the treasury for the same.

All laws coming within the perview of this act are hereby repealed. This act to take effect on the first day of June next.

[Approved, Jan. 6, 1827.]

*AN ACT to restrain Gaming.*

In force January 16, 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all promises, notes, bills, bonds, covenants, contracts, agreements, judgments, mortgages, or other securities or conveyances made, given, granted, drawn, or entered into, or executed, by any person or persons whatsoever, where the whole, or any part of the consideration thereof, shall be for any money, property, or other valuable thing, won by gaming, or playing at cards, dice, or any other game or games, or by betting on the side or hands of any person gaming, or for the reimbursing or paying any money or property, knowingly lent or advanced, at the time and place of such play, to any person or persons so gaming or betting; or that shall, during such play, so play or bet, shall be void and of no effect.*

SEC. 2. Any person who shall, at any time or sitting, by playing at cards, dice, or any other game or games, or by betting on the side or hands of such as do game, lose to any one or more persons, so playing or betting, any sum or sums of money, or other valuable thing, amounting in the whole to the sum of ten dollars, and shall pay or deliver the same, or any part thereof, the person or persons so losing and paying or delivering the same, shall be at liberty to sue for and recover the money, goods, or other valuable thing, so lost and paid or delivered, or any part thereof, or the full value of the same, by action of debt, detinue, By the ordinary actions assumpsit or trover, from the respective winner or winners thereof, with costs, in any court of competent jurisdiction; in which action it shall be sufficient for the plaintiff to declare generally, as in actions of debt or assumpsit for money had and received by the defendant to the plaintiff's use; or as in actions of detinue or trover upon a supposed finding, and the detaining or converting the property of the plaintiff to the use of the defendant, whereby an action hath accrued to the plaintiff, according to the form of this act, without setting forth the special matter. In case the person or persons who shall lose such money or other thing, as aforesaid, shall not, within six months, really and *bona fide*, and without covin or collusion, sue, and with effect prosecute, for such money, or other thing, by him lost and paid or delivered, as aforesaid, it shall be lawful for any other person to sue for, and recover, treble the value of the money, goods chattels, and other things, with costs of suit, by special action on the case, against such winner or winners aforesaid; one half to the use of the county, and the other to the person suing.

All contracts upon gaming consideration declared void  
Persons losing may recover back money paid if it amounts to \$10

## HABEAS CORPUS.

All contracts, judgments, &c. upon gaming contracts may be set aside in equity

SEC. 3. All judgments, mortgages, assurances, bonds, notes, bills, specialties, promises, covenants, agreements, and other acts, deeds, securities, or conveyances, given, granted, drawn or executed contrary to the provisions of this act, may be set aside and vacated by any court of equity, upon bill filed for that purpose, by the person so granting, giving, entering into, or executing the same, or by his executors or administrators; or by any creditor, heir, devisee, purchaser, or other person interested therein; or if a judgment, the same may be set aside, on motion of any person aforesaid, on due notice thereof given.

Assignments will not affect the defence in such cases

SEC. 4. No assignment of any bill, note, bond, covenant, agreement, judgment, mortgage or other security or conveyance as aforesaid, shall in any manner affect the defence of the person giving, granting, drawing, entering into or executing the same, or the remedies of any person interested therein.

The parties entitled to a discovery

SEC. 5. In all actions or other proceedings commenced or prosecuted under the provisions of this act, the parties shall be entitled to discovery as in other actions, and all persons shall be obliged and compelled to answer, upon oath, such bill or bills as shall be preferred against them for discovering the sum or sums of money, or other thing so won as aforesaid. Upon the discovery and repayment of the money, or other thing so to be discovered and repaid, the person or persons who shall discover and repay the same, as aforesaid, shall be acquitted, indemnified and discharged from any other or further punishment, forfeiture or penalty, which he or they might have incurred, by the playing for, or winning such money or other thing, so discovered or repaid as aforesaid. All acts and parts of acts coming within the provisions of this act, are hereby repealed.

[Approved, Jan. 16, 1827.]

Acts repealed

## HABEAS CORPUS.

In force June 1 1827 AN ACT regulating the proceedings on writs of Habeas Corpus.

Applications for habeas corpus, how and to whom made

SEC. 1. Be it enacted by the People of the State of Illinois represented in the General Assembly, That if any person shall be, or stand committed, or detained for any criminal or supposed criminal matter, it shall and may be lawful, for him to apply to the supreme or circuit courts in term time, or any judge thereof, in vacation, for a writ of *habeas corpus*.

per, which application shall be in writing, and signed by the prisoner, or some person on his or her behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained; and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy had been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given; the said court or judge, to whom the said application shall be made, shall forthwith award the said writ of *habeas corpus*, unless it shall appear from the petition itself, or from the documents annexed, that the party can neither be discharged nor admitted to bail, nor in any other manner relieved. Which said writ, if issued by the court, shall be under the seal of the court; if by a judge, under the hand of the judge; and shall be directed to the person in whose custody the prisoner is detained, and be made returnable forthwith; to the intent that no officer, sheriff, jailer, keeper, or other person, to whom such writ shall be directed, may pretend ignorance thereof, every such writ shall be endorsed with these words, "by the *habeas corpus* act," and whenever the said writ, shall by any person be served, upon the sheriff, jailer, keeper, or other person whatsoever, to whom the same shall be directed, or being brought to him, or being left with any of his under officers or deputies, at the jail or place where the prisoner is detained, he, or some of his under officers or deputies, shall, upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the court or judge awarding the said writ, and endorsed thereon, not exceeding ten cents per mile; and upon sufficient security given to pay the charges of carrying him back, if he shall be remanded, make return of such writ, and bring, or cause to be brought, the body of the prisoner, before the court or judge who granted the said writ; or in case of the adjournment of the said court, or absence of the judge, then before any other of the judges aforesaid, and certify the true cause of his imprisonment within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where the writ is returnable; if beyond the distance of twenty miles, and not above one hundred miles, then within ten days; and if beyond the distance of one hundred miles, then within twenty days after the delivery of the writ, as aforesaid, and not longer.

SEC. 2. Where any person not being committed or detained, for any criminal, or supposed criminal matter, shall be confined or restrained, of his or her liberty, un-

Proceeding  
thereon

Officer having  
custody of pri-  
soner to bring  
the body before  
the judge or  
court within  
three days if  
not over 20  
miles and not  
above 100, then  
within 10 days,  
if over 100 then  
in 20 days

How obtained  
where a person  
is confined, and  
not for a crimi-  
nal matter

## HABEAS CORPUS.

der any color or pretence whatever, he or she may apply for a writ of *habeas corpus*, as aforesaid, which application shall be in writing, signed by the party, or some person on his or her behalf, setting forth the facts concerning his or her imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he or she is detained; which application, or petition, shall be verified by the oath or affirmation of the party applying, or some other person, on his or her behalf; if the confinement or restraint is by virtue of any judicial writ, or process, or order, a copy thereof shall be annexed thereto, or an affidavit made that the same had been demanded and refused: the same proceedings shall thereupon be had in all respects, as are directed in the preceding section.

Upon the return of the writ when to be heard

Prisoner may deny the facts in the return

Returns may be amended

Court or judge to proceed in a summary way

Prisoner in custody on process for what cause he may be discharged

SEC. 3. Upon the return of the writ of *habeas corpus*, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner shall request a longer time. The said prisoner may deny any of the material facts set forth in the return, or may allege any fact to shew either that the imprisonment or detention is unlawful, or that he is then entitled to his discharge; which allegations or denials shall be made on oath; the said return may be amended by leave of the court or judge, before or after the same is filed, as also may all suggestions made against it, that thereby material facts may be ascertained. The said court or judge shall proceed in a summary way to settle the said facts, by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner, and the person who holds him in custody, and shall dispose of the prisoner as the case may require; if it appear that the prisoner is in custody by virtue of

process from any court, legally constituted, he can be discharged only for some one of the following causes: first, where the court has exceeded the limits of its jurisdiction, either as to the matter, place, sum or person; second, where though the original imprisonment was lawful, yet by some act, omission or event, which has subsequently taken place, the party has become entitled to his discharge; third, where the process is defective in some substantial form required by law; fourth, where the process, though in proper form, has been issued in a case, or under circumstances where the law does not allow process, or orders for imprisonment or arrest to issue; fifth, where, although in proper form, the process has been issued or executed, by a person either unauthorized to issue or execute the same, or where the person having the custody of the prisoner under such process, is not the person em-

powered by law to detain him; sixth, where the process appears to have been obtained by false pretence or bribery; seventh, where there is no general law, nor any judgment, order or decree of a court, to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding. No court or judge, on the return of a *habeas corpus*, shall, in any other matter, inquire into the legality or justice of a judgment, or decree of a court legally constituted. In all cases where the imprisonment is for a criminal, or supposed criminal matter, if it shall appear to the said court or judge, that there is sufficient legal cause for the commitment of the prisoner, although such commitment may have been informally made, or without due authority; or the process may have been executed by a person not duly authorized, the court or judge shall make a new commitment, in proper form, and directed to the proper officer, or admit the party to bail, if the case be bailable.

SEC. 4. When any person shall be admitted to bail, on *habeas corpus*, he shall enter into recognizance with one or more securities, in such sum as the court or judge shall direct, having regard to the circumstances of the prisoner, and the nature of the offence, conditioned for his or her appearance at the next circuit court, to be holden in and for the county where the offence was committed, or where the same is to be tried: where any court, or judge, shall admit to bail, or remand any prisoner brought before him or them, on any writ of *habeas corpus*, it shall be the duty of the said court or judge to bind all such persons as do declare any thing material to prove the offence with which the prisoner is charged, by recognizance to appear at the proper court having cognizance of the offence, on the first day of the next term thereof, to give evidence touching the said offence, and not to depart the said court without leave; which recognizance, so taken, together with the recognizance entered into by the prisoner, when he is admitted to bail, shall be certified and returned to the proper court, on the first day of the next succeeding term thereof. If any such witnesses shall neglect or refuse to enter into a recognizance as aforesaid, when thereunto required, it shall be lawful for the court or judge to commit him to jail until he shall enter into such recognizance, or be otherwise discharged, by due course of law; if any judge shall neglect or refuse to bind any such witness or prisoner, by recognizance, as aforesaid, or to return any such recognizance, when taken as aforesaid, he shall be deemed guilty of a misdemeanor in office, and be proceeded against accordingly.

Judgments, &c.,  
not to be inqu-  
red into

Not to dis-  
charge for in-  
formality but  
to recommit

Prisoner when  
bailed to give  
security for his  
appearance

Witness to be  
recognized

Witnesses not  
entering in re-  
cognizance  
may be commit-  
ted

**When prisoner is remanded, duty of judge** SEC. 5. Where any prisoner, brought up on *habeas corpus*, shall be remanded to prison, it shall be the duty of the court or judge remanding him, to make out and deliver to the sheriff, or other person, to whose custody he shall be remanded, an order, in writing, stating the cause or causes of remanding him. If such prisoner shall obtain a second writ of *habeas corpus*, it shall be the duty of such sheriff or other person to whom the same shall be directed, to return therewith the order aforesaid, and if it shall appear that the said prisoner was remanded for an offence adjudged not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

**Prisoner not to be discharged if specially charged with crime**

**But may be bailed if bailable, &c.**

**Prisoner once discharged not to be again imprisoned for the cause unless indicted, &c.**

**What shall not be deemed the same cause**

**When prisoners shall not be discharged**

SEC. 6. It shall not be lawful for any court or judge, on a second writ of *habeas corpus*, obtained by such prisoner, to discharge the said prisoner, if he is clearly and specifically charged in the warrant of commitment, with a criminal offence; but the said court or judge shall, on the return of such second writ, have power only to admit such prisoner to bail, where the offence is bailable by law, or remand him to prison where the offence is not bailable; or being bailable, where such prisoner shall fail to give the bail required.

SEC. 7. No person who has been discharged by order of a court or judge, on a *habeas corpus*, shall be again imprisoned, restrained, or kept in custody for the same cause, unless he be afterwards indicted for the same offence; or unless by the legal order or process of the court wherein he is bound by recognizance to appear; the following shall not be deemed to be the same cause: first, if after a discharge for a defect of proof, or any material defect in the commitment in a criminal case, the prisoner should be again arrested, on sufficient proof, and committed by legal process for the same offence; second, if in a civil suit the party has been discharged for any illegality in the judgment or process, and is afterwards imprisoned by legal process for the same cause of action; third, generally, whenever the discharge has been ordered, on account of the non-observance of any of the forms required by law, the party may be a second time imprisoned, if the cause be legal, and the forms required by law, observed.

SEC. 8. No person shall be discharged under the provisions of this act, who is in custody under a commitment, for any offence exclusively cognizable by the courts of the United States, or by order, execution or process issuing out of such courts, in cases where they have jurisdiction, or who is held by virtue of any legal engagement or enlistment in the army, or who being subject to the rules

and articles of war, is confined by any one legally acting under the authority thereof; or who is held as prisoner of war under the authority of the United States, or who is in custody for any treason, felony, or other high misdemeanor committed in any other state or territory of the United States, and who by the constitution and laws of the United States, ought to be delivered up to the executive power of such state or territory: nor shall any negro or mulatto, held as a slave within this state, try his right to freedom, or be discharged from slavery under the provisions of this act, but for that purpose shall be put to his suit for freedom.

SEC. 9. If any person shall be committed for a criminal, or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the second term of the court having jurisdiction of the offence, the prisoner shall be set at liberty by the court, unless the delay shall happen on the application of the prisoner. If such court, at the second term, shall be satisfied that due exertions have been made, to procure the evidence for, and on behalf of the people, and that there are reasonable grounds to believe, that such evidence may be procured at the third term, they shall have power to continue such case till the third term. If any such prisoner shall have been admitted to bail for a crime other than a capital offence, the court may continue the trial of said cause to a third term, if it shall appear by oath or affirmation that the witnesses for the people of the state, are absent, such witnesses being mentioned by name, and the court shewn wherein their testimony is material.

SEC. 10. To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any prisoner on *habeas corpus* under this act, out of the county in which he or she is confined, within fifteen days next preceding the term of the court at which such person ought to be tried, except it be to convey him or her into the county where the offence with which he, or she, stands charged, is properly cognizable.

SEC. 11. Any person being committed to any prison, or in the custody of any officer, sheriff, jailer, keeper, or other person, or his under officer or deputy, for any criminal, or supposed criminal matter, shall not be removed from the said prison or custody, into any other prison or custody, unless it be by *habeas corpus*, or some other legal writ, or where the prisoner shall be delivered to the constable, or other inferior officer, to be carried to some common jail; or shall be removed from one place to another, within the county, in order to his discharge or trial in due course of

When he may be discharged for delay

Trial may be continued to a third term

Removals for delay

Removals from one prison to another, when allowed, must be by legal writ, except in certain cases

law, or in case of sudden fire, infection, or other necessity, or where the sheriff shall commit such prisoner to the jail of an adjoining county, for the want of a sufficient jail in his own county, as is provided in the act concerning jails and jailers, or where the prisoner, in pursuance of a law of the United States, may be claimed or demanded by the executive of any of the United States or territories. If any person or persons, shall, after such commitment, as aforesaid, make out, sign, or countersign, any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or party aggrieved, a sum not exceeding three hundred dollars, to be recovered by the prisoner or party aggrieved, in the manner herein-after mentioned.

Penalty for illegal removals

Refusal to issue writ

Liability of officers refusing to obey and return the writ

Removing prisoner to avoid the writ

SEC. 12. Any judge empowered by this act to issue writs of *habeas corpus*, who shall corruptly refuse to issue such writ, when legally applied to, in a case where such writ may lawfully issue, or who shall, for the purposes of oppression, unreasonably delay the issuing of such writ, shall, for every such offence, forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars.

SEC. 13. If any officer, sheriff, jailer, keeper, or other person, to whom any such writ shall be directed, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner, according to the command of the said writ, within the time required by this act, all, and every such officer, sheriff, jailer, keeper, or other person, shall be guilty of a contempt of the court or judge, who issued said writ; whereupon, the said court or judge may, and shall issue an attachment against such officer, sheriff, jailer, keeper, or other person, and cause him or them to be committed to the jail of the county, thiere to remain without bail or mainprize, until he or they shall obey the said writ; such officer, sheriff, jailer, keeper, or other person, shall also forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars, and shall be incapable of holding or executing his said office.

SEC. 14. Any one having a person in his custody, or under his restraint, power or control, for whose relief a writ of *habeas corpus* is issued, who, with intent to avoid the effect of such writ, shall transfer such person to the custody, or place him or her under the control of another, or shall conceal him or her, or change the place of his or her confinement, with intent to avoid the operation of such writ, or with intent to remove him or her out of the state, shall forfeit for every such offence one thousand dollars, and may be imprisoned not less than one year, nor more than five years. In any prosecution for the penalty in-

curred under this section, it shall not be necessary to shew, that the writ of *habeas corpus* had issued at the time of the removal, transfer or concealment therein mentioned, if it be proven that the acts therein forbidden, were done with the intent to avoid the operation of such writ.

SEC. 15. Any sheriff, or his deputy, any jailer or coroner, having custody of any prisoner, committed on any civil or criminal process, of any court or magistrate, who shall neglect to give such prisoner a copy of the process, order, or commitment, by virtue of which he is imprisoned, within six hours after demand made by said prisoner, or any one on his behalf, shall forfeit five hundred dollars.

Penalty for re-fusing to give prisoner a copy of commitment

SEC. 16. Any person, who, knowing that another has been discharged by order of a competent judge or tribunal, on a *habeas corpus*, shall, contrary to the provisions of this act, arrest, or detain him again for the same cause, which was shown on the return of such writ, shall forfeit five hundred dollars, for the first offence, and one thousand dollars for every subsequent offence.

Penalty for ar-resting a per-son that has been once dis-charged

SEC. 17. All the pecuniary forfeitures incurred under this act, shall inure to the use of the party for whose benefit the writ of *habeas corpus* issued, and shall be sued for, and recovered with costs, by the attorney general, or circuit attorney, in the name of the state, by information, and the amount, when recovered, shall, without any deduction, be paid to the party entitled thereto.

For whose ben-e-fit the forfeit-ures under this inure  
Attorney Gene-ral and Circuit At-to-ney-ees to pro-secute

SEC. 18. In any action or suit for any offence against the provisions of this act, the defendant or defendants may plead the general issue, and give the special matter in evidence.

The general issue may be pleaded in ac-tions under this act.

SEC. 19. The recovery of the said penalties shall be no bar to a civil suit for damages.

Recovery no bar to civil ac-tions

SEC. 20. The supreme and circuit courts within this state, or the judges thereof, in vacation, shall have power to issue writs of *habeas corpus*, for the purpose of bringing the body of any person confined in any jail, within the same, before them to testify, or be surrendered, in discharge of bail. When a writ of *habeas corpus* shall be issued, for the purpose of bringing into court any person to testify, or the principal to be surrendered in discharge of bail; and such principal or witness shall be confined in any jail in this state, out of the county in which such principal or witness is required to be surrendered or to testify, the writ may run into any county in this state, and there be executed and returned by any officer to whom it shall be directed; and the principal, after being surrendered, or his bail discharged, or a person testifying as aforesaid,

Habeas corpus, ad testifican-dum, &c.

## ILLEGITIMATE CHILDREN.

shall, by the officer executing such writ, be returned to the jail from whence he was taken, by virtue of an order of the court, for the purposes aforesaid; an attested copy of which, lodged with the jailer, shall exonerate such jailer from being liable for an escape. The party praying out such writ of *habeas corpus*, shall pay to the officer executing the same, such reasonable sum for his services, as shall be adjudged by the courts respectively. This act to take effect on the first day of June.

[Approved, Jan. 22, 1827.]

## ILLEGITIMATE CHILDREN.

In force, July  
1st, 1827.

*AN ACT to provide for the maintenance of Illegitimate Children.*

Proceedings in  
case of bastardy

Warrant

Trial

Recognizance

Duty of circuit  
court

SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That when any unmarried woman, who shall be pregnant or delivered of a child, which by law would be deemed a bastard, shall make complaint to any one or more of the justices of the peace for the county, where she may be so pregnant, or delivered, and shall accuse, under oath or affirmation, any person with being the father of such child, it shall be the duty of such justice or justices, to issue a warrant directed to the sheriff or any constable of such county, against the person so accused, and cause him to be brought forthwith before him or them. Upon his appearance, it shall be the duty of the said justice or justices, to examine the said woman, upon oath or affirmation, in the presence of the man alleged to be the father of the child, touching the charge against him. If the said justice or justices shall be of opinion that sufficient cause appears, it shall be his or their duty to bind the person so accused, in bond, with sufficient and good security, to appear at the next circuit court to be holden for said county, to answer to such charge; to which court, said warrant and bond shall be returned. On neglect or refusal to give such bond and security, the justice or justices shall cause such person to be committed to the jail of the county there to be held to answer such complaint.

SEC. 2. The circuit court of such county, at their said next term, shall have full cognizance and jurisdiction of the said charge of bastardy, and shall cause an issue to be made up, whether the person charged as aforesaid, is the real father of the child or not, which issue shall be

tried by a jury. Such inquiry shall not be *ex parte*, when <sup>Trial there</sup> the person charged shall appear and deny the charge; but he shall have a right to appear and defend himself by counsel, and controvert by all legal evidence, the truth of such charge.

SEC. 3. If at the time of such court, the woman be not delivered, or be unable to attend, the court shall order a <sup>Continuance</sup> recognizance to be taken of the person charged as aforesaid, in such amount, and with such sureties as the court may deem just, for the appearance of such person at the next court, after the birth of her child; and should such mother not be able to attend at the next term, after the birth of her child, the recognizance shall be continued until she is able.

SEC. 4. On the trial of every issue of bastardy, the mother shall be admitted as a competent witness, and her credibility shall be left to the jury. She shall not be admitted as a witness, in case she has been duly convicted of any crime, which would by law disqualify her from being a witness in another case.

SEC. 5. In case the issue be found against the defendant, or reputed father, or whenever he shall, in open court, have confessed the truth of the accusation against him, he shall be condemned by the judgment of the said court, to pay such sum of money, not exceeding fifty dollars, yearly, for seven years, as in the discretion of the said court may seem just and necessary for the support, maintenance and education of such child; and shall, moreover, be adjudged to pay all the costs of the prosecution, for which execution shall issue, as in other cases of costs. The said defendant, or reputed father, shall give bond and security <sup>Judgment</sup> for the due and faithful payment of such sum of money, as shall be ordered to be paid by the said court, to be paid by him for the period aforesaid; which shall be made payable quarter yearly to the judge of the court of probate, and his successor in office, for the county in which the prosecution aforesaid was commenced; and the same, when received, shall be laid out and appropriated, from <sup>Duty of judge</sup> time to time, by the said judge, under his order and direction, for the purposes aforesaid; in case the defendant, or reputed father, shall refuse or neglect to give such security, as may be ordered by the court, he shall be committed to the jail of the county, there to remain until he shall comply with such order, or until otherwise discharged by due course of law: *Provided, always, that the said* <sup>How the bond</sup> *reputed father, after giving bond with apprroved security, may be dis-* <sup>charged</sup> *to the court of probate in said county, conditioned for the* <sup>charged</sup> *suitable maintenance of any such child, for the term*

aforesaid, shall be permitted to take charge and have the control of his said child; and from the time of the said father taking charge of such child, or should the mother refuse to surrender the said child, when so demanded by the said father, then and from thenceforth the said father shall be released and discharged from the payment of all such sum or sums of money as may thereafter become due against the said father, for the support, maintenance and education of any such child. If the said child should never be born alive, or being born alive, should die, at any time, and the fact shall be suggested upon the record of the said court, then the bond aforesaid shall from thenceforth be void. But when a guardian shall be appointed for such bastard, the money arising from such bonds shall be paid over to such guardian.

Reputed father  
being acquitted  
mother to pay  
the costs

SEC. 6. If upon the trial of the issue aforesaid, the jury shall find that the child is not the child of the defendant, or pretended father, then the judgment of the court shall be that he be discharged; the woman making the complaint shall pay the costs of the prosecution, and judgment shall be entered therefor, and execution may be re-  
upon issue.

Marriage of the  
reputed father  
and mother

SEC. 7. If the mother of any bastard child, and the reputed father, shall at any time after its birth, intermarry, the said child shall, in all respects, be deemed and held legitimate, and the bond aforesaid be void.

Limitation of  
prosecutions

SEC. 8. No prosecution under this act, shall be brought after two years from the birth of the bastard child: *Provided*, the time any person accused shall be absent from the state, shall not be computed.

Acts repealed

SEC. 9. All acts and parts of acts coming within the purview of this act, are hereby repealed. Such repeal shall in no case affect or impair any rights acquired under the acts hereby repealed. This act shall be in force on the first day of July next.

[Approved, Jan. 23, 1827.]



## JAILS AND JAILERS.

In force July  
1, 1827

### AN ACT concerning Jails and Jailers.

A common jail  
to be kept in  
each county

SEC. 1. Be it enacted by the People of the State of Illinois represented in the General Assembly, That there shall be kept and maintained, in good and sufficient condition and repair, a common jail in each county within this state, at the permanent seat of justice for such county.

SEC. 2. The sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within the county, and of all prisoners in such jail, and may appoint a jailer under him, and remove him at pleasure, for whose conduct he shall be responsible.

SEC. 3. It shall be the duty of the sheriff and jailer to receive from constables and other officers and confine in such jail, all persons who shall be apprehended by such constables or officers for offences against this state, or who shall be committed to such jail by any competent authority, until discharged by due course of law.

SEC. 4. It shall not be lawful for any sheriff or jailer, to confine or keep debtors, and persons committed for crimes, in the same room; but they shall be confined and kept separate and apart from each other.

SEC. 5. Every person who shall be committed to the common jail within any county of this state, by lawful authority, for any crime or misdemeanor, if he or she shall be convicted thereof, shall pay the expenses of arresting and conveying him or her to the said jail, and also of his or her support while in jail, before he or she shall be discharged, and the property of such person shall be subjected to the payment of such expenses from the time of his or her arrest; and all such expenses up to the time of conviction shall be included in the judgment for costs. All expenses incurred for the support of such convicted person after conviction, may be collected by order of the circuit court, from time to time as occasion may require: *Provided however*, that said court may in their discretion refuse to make such order upon being satisfied on the oath of such convicted person or otherwise, that such convicted person has no property or means of satisfying such expenses for his or her support.

SEC. 6. Whenever any person committed to jail upon any criminal process, under any law of this state, shall declare, on oath or affirmation, in writing, that he or she is unable to buy or procure necessary food, the sheriff or jailer shall provide such prisoner with necessary food, for which he shall be allowed a reasonable compensation, to be ascertained by the county commissioners' court, and paid as other county charges. And if from the inclemency of the season, the sickness of the prisoner, or other cause, the sheriff shall be of opinion that additional clothes or bedding are necessary for such prisoner, and such prisoner shall be unable to obtain or procure the same, the said sheriff shall furnish the same, for the use of such prisoner during his confinement; for which he shall be allowed a just compensation, and paid as aforesaid.

SEC. 7. Every sheriff and jailer, and other person or

Sheriffs keeper  
of jails &c. in  
their own cts.

Debtors and  
criminals to be  
kept separate

Expenses of  
confinement to be  
paid by pris-  
oner

Poor persons  
shall be provi-  
ded for by the  
sheriff

His compen-  
sation therefor

persons whatsoever, to whose custody or keeping any person or persons shall be committed, by virtue of any writ or process, or for any criminal offence, except on conviction of any felonious offence, shall permit and suffer, him, her, or them, so committed, at his, her, or their will and pleasure, to send for, and have any cider, ale, beer, victuals, or other necessary drink or food, from what place and whom they please, and also to have and use such bedding, linen, and other things, as he, she or they shall think fit, without detaining the same, or any part thereof, or enforcing or requiring him, her or them, to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her or them, in using thereof, or relating thereto.

The grand jury  
shall inspect  
the prisoners  
and report to  
the circuit court

And it shall be the duty of the grand jury, at each term, or a committee to consist of at least three members thereof, to visit the jail of their county, and examine the condition thereof, and inquire into the treatment of the prisoners, and make report thereof to the court. And it is hereby made the especial duty of the circuit court, at each term, to inquire and see that all prisoners, civil and criminal, are humanely treated.

Persons impris-  
oned for felon-  
y to be kept  
on inferior food

SEC. 8. All persons convicted of any felonious or other high crime, and sentenced to imprisonment for six months, or upwards, shall, for the whole term of their imprisonment, be kept upon inferior, but wholesome food. All spirituous liquors are prohibited to such prisoners, unless by the direction of some respectable physician.

United States'  
prisoners

SEC. 9. It shall be the duty of the keeper of the jail, in every county within this state, to receive into his custody, any prisoner or prisoners who may be, from time to time committed to his charge, under the authority of the United States, and to keep safely every such prisoner or prisoners, according to the warrant or precept of such commitment, until he or they shall be discharged by due course of the laws of the United States.

Neglect of duty  
of jailer

Compensation  
to be exacted  
of the marshal

SEC. 10. The keeper of every jail aforesaid, shall be subject to the same pains and penalties, for any neglect or failure of duty herein, as he would be subject to, by the laws of this state for the like neglect or failure in the case of a prisoner committed under the authority of the said laws: *Provided, always,* that the United States do pay, or cause to be paid, for the use and keeping of such jails, at the rate of fifty cents per month, for each person that shall, under their authority, be committed thereto, and also to the jailer such fees as he would be entitled to for like services rendered, in virtue of the existing laws of this state, during the time such prisoner shall be therein con-

fined, and moreover, do support such of the said prisoners as shall be committed for offences.

SEC. 11. Whenever the sheriff of any county in this state shall be of opinion that the jail of his county is insufficient to secure the prisoners, that shall be confined therein, it shall be his duty to give notice thereof to the county commissioners' court of such county: and also whenever any sheriff shall have in his custody any person or persons charged with any capital offence or other high crime against the laws of this state, and the jail of the county shall be insufficient, or if there shall be no jail in his county, he may by and with the advice and direction of any of the judges of the circuit or supreme court or of any two justices of the peace of his county employ a guard sufficient for the guarding and safe keeping of such prisoner or prisoners in his own county; the said guard not to exceed, however, in any instance, more than three persons. The expenses of said guard to be audited and paid as other county expenses.

In what cases a guard may be summoned

SEC. 12. It shall be lawful for the sheriff of any county in this state, when there shall happen to be no jail, or when the jail of such county shall be insufficient, to commit any person or persons in his custody, either on civil or criminal process, to the nearest jail of some other county, in the same circuit; and it is hereby made the duty of the sheriff or keeper of the jail of said county to receive such person or persons, so committed as aforesaid, and him, her or them, safely keep, subject to the order or orders of the circuit judge for the said circuit.

When prisoners may be transferred from one county to another

SEC. 13. It shall be the duty of the sheriff so committing any person or persons as aforesaid, for any criminal offence, forthwith to notify the circuit judge for the circuit where such person or persons, so committed is, or are to be tried, of the committing of such person or persons to the jail of such other county; and transmit at the same time to such circuit judge a copy of the day and cause of the caption and detention of such person or persons.—Whereupon, it shall be the duty of such circuit judge, within fifteen days next preceding the first day of the circuit court of the county where such person or persons is or are to be tried, to issue a writ or writs of *habeas corpus*, directed to the sheriff or keeper of the jail of the county where such person or persons is or are committed, commanding him or them to have the body or bodies of such person or persons thus committed, together with the day and cause of his or their caption and detention, before the circuit court of the said county for the trial of such offences, on the first day of their next term of the said court; and it

Notice to the circuit judge

shall be the duty of the said sheriff or keeper of the jail to bring or cause to be brought, the said person or persons, thus committed as aforesaid, on the day and at the place mentioned in the said writ. And any sheriff or keeper of the jail as aforesaid, failing or neglecting to make return as aforesaid, and to bring the body or bodies of said person or persons according to the command of the said writ, shall be deemed guilty of a contempt of the said court, and shall be liable to be attached and committed to the jail of the county, there to remain without bail or mainprize until he shall obey such writ: And shall moreover forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars, to be apportioned according to the nature, aggravations and circumstances of the case, and the injury which the party aggrieved may sustain thereby, to be recovered by the prisoner or party aggrieved, in an action on the case founded upon this statute; and the said sheriff or keeper of the jail, may also in the discretion of the said court, be removed from office, and rendered incapable of holding or executing the same thereafter. The sheriff for committing any prisoner as aforesaid, or for executing any writ of *habeas corpus* under this act, shall be entitled to the like fees as are provided by law for similar services.

**SEC. 14.** In all cases where a person is committed from another county, for a criminal offence under this act, such county or the prisoner shall pay the expenses, in the same manner as if the commitment had been in the county where the offence was committed. And in civil suits the plaintiff or defendant, shall pay the expenses in the same manner as if the imprisonment had taken place in the same county where the suit was commenced.

**SEC. 15.** The sheriff may be imprisoned in the jail of his own county, and for the time that he shall be confined within the walls of the prison, the coroner shall have the custody, rule, keeping, and charge of the said jail; and shall by himself and his securities be answerable for the faithful discharge of his duties in that office.

**SEC. 16.** The act entitled "An act for the safe keeping of prisoners," approved March 22d, 1819; and the act entitled "An act authorizing the commitment of persons to the jail of another county arrested in a county where there is not a sufficient jail," approved March 23d, 1819; and the "Act for the safe keeping of prisoners committed to any jail in this state, under the authority of the United States," approved January 20th, 1821, are hereby repealed. This act to effect from the first day of July next.

Expenses of imprisonment

Sheriff being imprisoned the coroner to have the custody of jail

Acts repealed

[Approved, Jan. 26, 1827.]

*An ACT prescribing the mode of summoning Grand and Petit Jurors, and defining their qualifications and duties.*

In force June 1  
1827

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That all free white male taxable inhabitants, in any of the counties in this state, being natural born citizens of the United States, or naturalized according to the constitution and laws of the United States, and of this state, between the ages of twenty-one and sixty years, not being judges of the supreme or circuit court, county commissioners, judges of probate, clerks of the circuit or county commissioners' court, sheriffs, coroners, postmasters, licensed attorneys, overseers of the highway, or occupiers of mills, ferries, toll-bridges or turnpike roads, being of sound mind and discretion, and not subject to any bodily infirmity, amounting to a disability, shall be considered and deemed as competent persons, (except in cases where legal disabilities may be imposed for the commission of some criminal offence) to serve on all grand and petit juries, in and for the bodies of their counties respectively.

SEC. 2. It shall be the duty of the county commissioners' court in each of the counties in this state, wherein a circuit court is directed to be holden, at least twenty days before the sitting of such court, to select twenty-three persons, possessing the qualifications aforesaid, and as nearly as may be, a proportionate number from each township in their respective counties, and to cause their clerk, within five days thereafter, to issue and deliver to the sheriff, or if there be no sheriff, or he be disqualified, then to the coroner of the county wherein the court is to be held, a summons commanding him to summon the persons so selected as aforesaid, to appear before the said circuit court, at or before the hour of eleven o'clock, A. M. on the first day of the term thereof, to serve as grand jurors, any sixteen of whom shall be sufficient to constitute a grand jury; which said summons shall be served at least five days before the sitting of the court, either by reading it to the person to be summoned, or by leaving an attested copy thereof at his last usual place of abode.

SEC. 3. After the grand jury is empanelled, it shall be the duty of the court to appoint a foreman, who shall have power to swear or affirm witnesses to testify before them. And whose duty it shall be, when the grand jury or any twelve of them find a bill of indictment, to be supported by good and sufficient evidence, to endorse thereon "a true bill;" and when they do not find a bill to be supported by sufficient evidence, to endorse thereon "not

Who may be  
jurors

Commissioners  
shall select  
grand jurors

16 shall make  
a grand jury

Foreman may  
swear witnesses

## GRAND AND PETIT JURORS.

a true bill;" and shall in either case, sign his name as foreman, at the foot of said endorsement; and shall also in each case, in which a true bill shall be returned into court as aforesaid, note thereon the name or names of the witness or witnesses, upon whose evidence the same shall have been found.

Oath of the foreman

SEC. 4. Before the grand jury shall enter upon the discharge of their duties, the following oath shall be administered to the foreman, to-wit: "You as foreman of this inquest, do solemnly swear, (or affirm, as the case may be) that you will diligently enquire into, and true presentment make of all such matters and things, as shall be given you in charge, or shall otherwise come to your knowledge, touching the present service; you shall present no person through malice, hatred or ill will, nor shall you leave any unpresented through fear, favor or affection, or for any fee or reward, or for any hope or promise thereof; but in all your presentments you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding, so help you God." And the following oath or affirmation, shall be administered to the other jurors, to-wit: "The same oath that A. B. your foreman has just taken before you on his part, you and each of you shall well and truly keep and observe on your respective parts, so help you God."

What evidence shall make presentments

SEC. 5. No grand jury shall make presentments of their own knowledge, upon the information of a less number than two of their own body, unless the juror giving the information, is previously sworn as a witness, in which case, if the evidence shall be deemed sufficient, an indictment may be found thereon, in like manner as upon the evidence of any other witness, who may not be of the jury.

Petit jury selected by county commissioners' court

SEC. 6. It shall also be the duty of the county commissioners' court, in each of the counties in this state, wherein a circuit court is directed to be held as aforesaid, at least twenty days before the sitting of such court as aforesaid, to select twenty four persons, possessing the qualifications aforesaid, who shall compose and constitute two full petit juries, to serve as such at the next succeeding term of the circuit court, in each county respectively, to be summoned in like manner as is herein before directed in the case of grand juries.

SEC. 7. It shall be the duty of the clerk of the circuit court, at the commencement of each term, to write the name of each petit juror on a separate ticket, and put the whole into a box or other place for safe keeping; and as often as it shall be necessary to empanel a jury, the clerk

sheriff, or coroner, shall in the presence of the court, draw by chance, twelve names out of such box or other place, which shall designate the twelve to be sworn on the jury, and in the same manner for the second jury, in their turn, as the court may, from time to time, order and direct.

SEC. 8. In all cases, where any sheriff or other officer, shall be commanded to execute any summons as aforesaid, he shall be required to make timely return thereof, to the clerk, who may have issued the same, with an endorsement thereon, certifying on whom it has been executed, and the time when; and in default of so doing, such sheriff or other officer, shall be considered as guilty of a contempt, and may be fined for the use of the proper county, in any sum not less than ten, nor more than fifty dollars, unless such sheriff or other officer, shall seasonably make his excuse, to the satisfaction and acceptance of the court.

Summons how  
executed and  
returned

SEC. 9. If a sufficient number of grand or petit jurors, when selected and summoned as aforesaid, shall not appear, or if by reason of challenges, or any other cause, there shall not be a sufficient number of qualified persons to make up the pannel, the court may order the sheriff to return without delay, such number of good and lawful men of the county, as may be necessary, for that purpose; and when the sheriff is interested, or related to either of the parties, the court may direct the coroner to make such return; and if any circuit court should at any time sit, before the county commissioners' court shall have made a selection of grand or petit jurors as aforesaid, or if on any account the whole pannel in either case shall fail to attend, the court may order the sheriff or other officer, to summon from the bystanders, being qualified persons as aforesaid, a sufficient number to supply such deficiency; who shall continue to serve for the remainder of the term, unless they shall be sooner discharged by the court.

Tales men

Comm'r's court  
making no se-  
lection, the cir-  
cuit court may  
order a jury to  
be summoned

SEC. 10. Every person who shall fail to attend, when lawfully summoned to appear as a grand or petit juror as aforesaid, without having a reasonable excuse, shall be considered as guilty of a contempt, and shall be fined by the courts, respectively, in any sum not less than five, nor more than twenty dollars, for the use of the proper county; unless good cause be shewn for such default, at, or before the next term of such court; and it shall be the duty of the clerk to issue a summons against all such delinquents (where such persons shall not come in without process) to shew cause at the next succeeding term of such court, why he or they should not be fined for such contempt; at which or any subsequent term, the court shall

Punishment for  
non attendance  
as a juror

Proceedings  
against delin-  
quen jurors

## GRAND AND PETIT JURORS.

proceed to assess said fine, unless the person or persons so summoned and failing to attend as aforesaid, shall appear and shew good cause for such delinquency. *Provided*, that the oath or affirmation of any such delinquent, shall at all times be received as competent evidence in his favor.

SEC. 11. In case of the death, sickness, or non-attendance of any grand or petit juror, after he shall have been sworn upon the jury, or where any such juror as aforesaid, after being sworn as aforesaid, shall for any reasonable cause be dismissed, or discharged, it shall be lawful for the court to cause others, if necessary, to be summoned and sworn, in his or their stead.

Compensation  
of petit jurors

SEC. 12. Each petit juror shall receive twenty-five cents, for each case which he may be sworn to try, to be advanced by the plaintiff, and taxed in the bill of costs, against the defendant, if he be cast in the suit, except in criminal cases, where no allowance or charge shall be made, either to jurors or witnesses.

Jurors privi-  
leged from ar-  
rest

SEC. 13. All grand and petit jurors shall be privileged from arrest, in all cases, except for treason, felony, breach of the peace or other criminal offence, during their attendance at court, going to and returning from the same; allowing one day for every twenty miles from and to their several places of abode, and all arrests, in such cases, shall be deemed as illegal and void.

Rotation in  
service

SEC. 14. It shall be the duty of the county commissioners' court to arrange and select the grand and petit jurors as aforesaid, so that no one person shall serve on the jury a second time, before all fit persons of the county shall have respectively served in rotation, according to the best information that can be obtained.

Acts repealed

SEC. 15. That the act entitled "An act prescribing the mode of summoning grand jurors" approved March 23d, 1819, the act entitled "An concerning petit jurors approved March 25th, 1819; the act entitled "An act to amend an act entitled an act prescribing the mode of summoning grand jurors," approved February 9th, 1821; the act entitled "An act amending an act entitled an act prescribing the mode of summoning grand jurors," approved February 18th, 1823, and all other acts and parts of acts coming within the purview of, or repugnant to this act, be and the same are hereby repealed. This act to take effect from and after the first day of June next.

[Approved, Feb. 7, 1827.]

*AN ACT to provide for the election of Justices of the Peace* In force Dec. 30, 1826.

SEC. 1. *Be it enacted by the People of the State of Illinois,* represented in the General Assembly, That from and after Act repealed the first day of October next, the act entitled "An act regulating the manner of appointing justices of the peace," approved February 19, 1819, shall be and the same is hereby repealed.

SEC. 2. It shall be the duty of the courts of county commissioners of each county in this state at their next June term, to divide their respective counties into a convenient number of districts, not less than two, nor more than eight, distinctly defining the boundaries of each district, giving to each a name, to appoint a place therein for holding the elections hereinafter mentioned, and to cause the same to be entered of record in their respective courts. Should any of said courts fail or neglect to lay off their county into districts as aforesaid, at their said June term, it shall be their duty to call a special term of the court, for that purpose, and to proceed to lay off their county into districts, in all respects as aforesaid. It shall be the duty of the clerks of said courts respectively to make out forthwith as many copies of said records, as there shall be districts in his county and to deliver the same to the sheriff, whose duty it shall be within ten days after the close of the term of the court at which the county shall be so divided into districts, to post up at the place appointed for holding elections, in each of said districts, one of said copies.

SEC. 3. The said courts shall, respectively, at their said June term, and at their June term every fourth year thereafter appoint three electors in each of said districts to be judges of election therein; and should any of said courts at any such term, fail to appoint judges of election, it shall be their duty to call a court for that purpose; and judges of election, who shall be appointed as aforesaid, shall continue in office for four years, and until their successors shall be appointed. When a vacancy shall happen in the office of judge of election, or when any such judge shall fail to attend, or refuse to serve, the vacancy shall be filled, or the judge appointed in the manner prescribed in like cases by the general election law. The said judges, and all other judges to be appointed by this act, shall give the notice of election, be qualified, appoint clerks, who shall be qualified, and the elections hereinafter mentioned, shall be conducted, returns thereof made, opened, examined, abstracts thereof made, and

Clerks to furnish the sheriff with copies of orders

Judges of election appointed

To continue in office 4 years

Vacancies how filled

Notice of election and proceeding there-

in

transmitted to the office of secretary of state, in the manner prescribed by law for the election of sheriffs, and the said judges of election shall be notified of their appointment in the manner prescribed for notifying other judges of election: *Provided*, that nothing in this act shall be so construed as to give the judges of the election or clerks any compensation for their services.

Number of justices in each district to be elected

SEC. 4. An election shall be held in each of said districts, on the first Monday in August next, and on the first Monday in August every fourth year thereafter, for two justices of the peace in each of said districts, except the district in which the county seat shall be, in which district there shall be three justices of the peace elected, and the justices so elected, shall continue in office for the term of four years, and until their successors shall be elected and qualified to office, respectively; at which election the inhabitants of a district qualified to vote at the general election, shall be entitled to vote. The persons receiving the highest number of votes in a district shall be declared duly elected.

Vacancies how filled

SEC. 5. When a vacancy shall happen in the office of justice of the peace in a district under this act, it shall be the duty of the clerk of the county commissioners' court of the county in which the vacancy shall so happen, to issue his order to the judges of election in the district, requiring them on a certain day, not less than twenty days from the date of such order, to hold an election to fill such vacancy, and the said judges shall at the time appointed in said order, hold an election to fill such vacancy; and conduct the same, and make returns thereof, which shall be opened, examined, abstracts thereof made and transmitted to the secretary's office, in the manner directed in the fourth section.

Elections in new counties

SEC. 6. When a new county shall hereafter be created, it shall be the duty of the court of county commissioners thereof, at their first term, to divide the same into districts as aforesaid, and appoint judges of election, and a time and place for holding elections therein as aforesaid, and to cause the same to be entered of record; and if from any cause, the said court shall fail or neglect the duty aforesaid, at their said first term, it shall be their duty to hold a special term for that purpose; and the clerk shall make out copies of such record, and the sheriff shall post up the same, as is provided in the second section of this act; and elections shall be held therein, for justices of the peace, returns thereof made, examined, and transmitted, in all respects as provided in the fourth section of this act; and justices of the peace so elected, shall continue in office un-

til the next quadrennial election of justices of the peace, and until their successors shall be elected and qualified.

SEC. 7. It shall be the duty of each and every justice of the peace, who shall be in office, on the first day of October next, to deliver over within ten days thereafter, to the clerk of the court of county commissioners of his county, all the statutes with which he may have been furnished by the state, and it shall be the duty of such clerk to receive and receipt for the same, and to deliver, on application, to each of the justices to be elected as aforesaid under this act, one set of said statutes; when justices shall be superseded at a quadrennial election, they shall deliver the statutes in their possession to the clerk as aforesaid, for the purposes aforesaid; and when any justice who shall be elected under the authority of this act, shall resign, be removed, or be superseded in office, except at the quadrennial election, or shall die, it shall be his duty, or in case of his death, the duty of the person having possession of the statutes, with which he shall have been furnished, within ten days after he shall be succeeded in office, to deliver over such statutes to such successor. It shall be the duty of each of the justices of the peace, who shall be in office on the first day of October next, within ten days thereafter, to deliver over to the nearest justice of the peace, who shall then be in office under this act, all the dockets, books and papers, in his possession, relative to the business transacted before him as a justice of the peace; and when any justice of the peace to be elected under this act, shall be succeeded in office, it shall be his duty, or in case of his death, the duty of the person having possession of his docket, books, and papers, relating to the business transacted before him, as such justice, to deliver over the same, within ten days after being so succeeded, to his successor in office; and any justice of the peace, to whom any such docket, books and papers, shall be delivered, shall proceed in the unfinished business thereof, in all respects, as though the business had been originally instituted before him.

SEC. 8. The election of a justice of the peace, and the election of a constable, may be contested in the manner prescribed by law for contesting the election of sheriffs.

SEC. 9. Justices of the peace who shall be elected under the authority of this act, shall have jurisdiction in their respective counties, and shall be commissioned by the governor, and sworn into office, as now required by law.

SEC. 10. Any clerk, sheriff, justice of the peace, judge of the election, or other person, who shall fail, neglect or

Justices now in office to deliver over papers, &c

Elections how contested.

Jurisdiction of justices, &c.

## JUSTICES OF THE PEACE AND CONSTABLES.

**Penalty for dis-  
obeying the  
provisions of  
act**

refuse, to perform any of the duties enjoined by this act, relative to elections or the delivery of statutes, dockets, books, or papers, shall, for any such failure, neglect, or omission, forfeit and pay for the use of the county, to be recovered by action of debt, in the name of the county commissioners, in any court having jurisdiction thereof; if a judge of election, clerk, or sheriff, the sum of ten dollars, and if a justice of the peace the sum of one hundred dollars.

**Election of con-  
stables.** SEC. 11. On the first Monday in August next, and on the first Monday in August every fourth year thereafter, at the time of electing justices of the peace, there shall be elected in the same manner, two constables for each of

**Vacancies how  
filled.** said districts, who shall continue in office for the same term as justices of the peace; and when a vacancy shall happen in the office of constable, it shall be filled in the manner prescribed for filling vacancies in the office of justice of the peace. And when a new county shall be created, two constables shall be elected in each district therein, in the same manner, at the same time, and to continue in office for the same term, as justices of the peace are required, in new counties.

**Constables cer-  
tificate & bond** SEC. 12. It shall be the duty of the respective clerks of the courts of county commissioners, to give to the constables respectively, certificates of their election; and it shall be the duty of every constable so elected, before entering on the duties of his office, at the next term of the county commissioners' court, held for his county, after his election, to execute and deliver in court a bond for the faithful performance of the duties of his office, conditioned and payable as now required by law, with two or more sufficient securities, to be approved by said court: Which bond shall be filed with the clerk of the court for the benefit of the persons interested, or to become so; and it shall be the duty of every such constable, at the end of every year thereafter, to execute and file a new bond as aforesaid; and upon failing to do so, it shall be the duty of the clerk of the court of county commissioners of his county, to treat his office as vacant; and order an election to fill such vacancy, as in other cases.

**Bond to be ex-  
ecuted annually**

**Constables  
sworn into of-  
fice  
Laws repealed** SEC. 13. Constables to be elected under this act, shall be sworn into office before entering on the duties of the office, as now required by law. So much of the act recited in the first section of this act as provides for the appointment of justices of the peace, is hereby repealed; and so much of any law, as authorizes courts of county commissioners to appoint constables, shall be repealed, from and after the tenth day of September next. No-

thing in this act contained, shall be construed so as to prevent any justice of the peace who shall be commissioned and qualified under this act, when there shall not be a constable in his district, from appointing a constable, as now required by law, who shall be qualified as now required in such cases, and shall continue in office until superseded by an election.

[Approved, Dec. 30, 1826.]

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## JUSTICES OF THE PEACE AND CONSTABLES.

*AN ACT concerning Justices of the Peace and Constables.*

In force 1st  
June, 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That the justices of the peace in this state, shall have jurisdiction within their respective counties, to hear and determine all civil suits, for any debts or demands of the following description, viz: For any debt claimed to be due on a promissory note, contract or agreement in writing, where the whole amount of such written contract, agreement or note, shall not exceed one hundred dollars. For any debt due upon a verbal contract or promise for a valuable consideration, not exceeding one hundred dollars. For any debt claimed to be due for goods, wares or merchandize sold and delivered; or for work or labor done or services rendered, where the amount claimed shall not exceed one hundred dollars. For any debt, claimed to be due for money had and received, for money lent, for money paid by the plaintiff for the defendant at his request, and for money received by the defendant for the plaintiff's use, not exceeding one hundred dollars. For any debt claimed to be due upon open and unsettled accounts between individuals, where the whole amount of the accounts of either party shall not exceed one hundred dollars. For any debt claimed to be due upon any settled account, where the balance settled and ascertained between the parties, and remaining unpaid, shall not exceed one hundred dollars. For any debt claimed to be due upon a contract for rent, not exceeding one hundred dollars. For any debt claimed to be due for any specific article of property, whether due by bond, note, or verbal promise, not exceeding one hundred dollars. And for all debts claimed to be due, not exceeding one hundred dollars, for which the action of debt or of assumpsit would lie: *Provided*, that nothing herein contained, shall be construed so as to vest a justice of the

Jurisdiction of  
Justices of the  
peace

Where executors and administrators are parties

peace with jurisdiction, in any case in which an executor or administrator shall be a party, where the sum demanded exceeds twenty dollars; except for debts due for property purchased at an executor or administrator's sale, when the same does not exceed one hundred dollars.

Their docket

SEC. 2. That it shall be the duty of every justice, whenever a suit shall be commenced before him, to record, in a book kept for that purpose, the names of the parties, the amount and nature of the debt sued for, the date and description of the process issued, and the name of the officer to whom such process shall be delivered; and throughout the whole of the proceedings in any suit, it shall be his duty, whenever any process shall be issued or returned, or any order made, or judgment rendered, to make a written memorandum of the same, in the same book, and to file and safely keep all papers given him in charge.

SEC. 3. Every suit before a justice, except such as are hereinafter provided for, in a different manner, shall be commenced by summons, which shall be in the following form, as nearly as the case will admit, viz:

Summons

STATE OF ILLINOIS, } *The People of the State of Illinois, to*  
 COUNTY. } *any Constable of said County,*  
 GREETING:

You are hereby commanded to summon A. B. to appear before me at        on the        day of        at        o'clock        to answer the complaint of C. D. for a failure to pay him a certain demand not exceeding one hundred dollars; and hereof make due return as the law directs. Given under my hand and seal, this        day of

182

JOHN DOE, J. P.

Service thereof

In which summons the Justice shall specify a certain place, day and hour, for the trial, not less than five, nor more than fifteen days from the date of such summons; at which time and place the defendant is to appear; which process shall be served at least three days before the time of trial mentioned therein, by reading the same to the defendant or defendants.

SEC. 4. If, previous to the commencement of a suit, the plaintiff shall make oath that there is danger that the debt or claim of such plaintiff will be lost, unless the defendant be held to bail, and shall state, under oath, the cause of such danger, so as to satisfy the justice that there is reason to apprehend such loss, the justice shall issue a warrant, which shall be in the following form, as nearly as the case will admit, viz:

STATE OF ILLINOIS, } *The People of the State of Illinois, to Capias*  
 COUNTY. } *any Constable of said County, Greeting:*

You are hereby commanded to take the body of and bring him forthwith before me, unless special bail be entered; and if such bail be entered, you will then command him to appear before me at      on the      day of      at      o'clock      to answer the complaint of A. B. for a failure to pay him a certain demand not exceeding one hundred dollars; and hereof make due return as the law directs. Given under my hand and seal this

day of      182      JOHN DOE J. P.

And in all cases the defendant shall have a right to release his or her body arrested by virtue of such process, by giving special bail to the constable executing the same, which shall be endorsed on the back of the warrant in the following form, as nearly as the case will admit, viz: "I, G. F. acknowledge myself special bail for the within named C. D. Witness my hand this      day of 182 G. F." Which endorsement shall be signed by one or more securities to be approved by the constable taking the same, and shall have the force and effect of a recognizance of bail, the condition of which is, that the defendant if judgment shall be given against him or her, will pay the same with costs, or surrender his or her body in execution, and in default of such payment or surrender, the goods and chattels of the bail shall be liable for the payment of the judgment and costs: *Provided*, that if the body of the defendant shall be rendered in execution by himself or his bail, within thirty days after the issuing of such execution, or if a sufficiency of the defendant's property shall be found to satisfy the judgment and costs, the bail shall be exonerated; but if neither the body of the defendant shall be surrendered, nor a sufficiency of his or her property can be found within the time aforesaid, to pay the judgment and costs, then the justice shall issue execution against the bail, who shall be dealt with in the same manner as if he were defendant.

SEC. 5. If the defendant shall not appear at the time of trial, after giving bail as aforesaid, or after being served with a summons, as described in the third section of this act, and no sufficient reason be assigned to the justice, why he or she does not appear, then the justice shall proceed to hear and determine the cause, in the absence of said defendant, but shall not give judgment in favor of the plaintiff, unless the said plaintiff shall fully prove his demand in the same manner as if the defendant had been present and denied the same.

Special bail

Effect thereof

Proviso

Trial in the absence of def't

Plaintiff not appearing suit to be dismissed

SEC. 6. If the plaintiff or his agent shall not appear at the time appointed for the trial aforesaid, and no sufficient reason shall be assigned to the justice, why such plaintiff or his agent does not appear, the justice shall dismiss the suit, and the plaintiff shall pay the costs, unless the defendant shall consent, that such suit shall be continued to another day, in which case, the same proceedings shall take place at the second day, so fixed for the trial as above provided; but this section shall not require the dismissal of a suit on a note placed in the hands of a justice for collection.

Appearance of one def't

SEC. 7. If two or more persons shall be sued jointly, before any justice of the peace, and all of such defendants shall have had notice as aforesaid, by warrant or summons, the appearance of any one of the said defendants, at the time of trial shall be sufficient to justify the said justice in proceeding as if all were present; and if none of said defendants shall appear after such notice, the justice shall, if the plaintiff's demand, be established as aforesaid, proceed as in other cases of default; and in either of the aforesaid cases, the justice shall not divide the amount of the debt proved among the defendants, but shall give one entire judgment for the whole amount proved to be due against so many of the defendants jointly, as shall be proved to be jointly indebted to the plaintiff. But if it shall appear to the justice, that any two or more of the defendants are severally indebted to the plaintiff, upon separate and different debts, or causes of action, or upon several or different promises or contracts, such plaintiff shall not be allowed to prosecute his suit against such defendants jointly. When there are several joint debtors, and all cannot be served with process, the justice may render judgment against such as are served with process.

Continuance

SEC. 8. Previous to the commencement of any trial before a justice of the peace, either party may move to have such trial put off for a time not exceeding ten days, upon making proof, either upon his own oath, or that of a credible witness, that the said party cannot safely proceed to trial, on account of the absence of a material witness, or on account of any other cause or disability, which would prevent him from obtaining justice at such trial; and if the justice be satisfied, that the party so applying cannot safely proceed to trial; and also that the party so applying has used due diligence to be ready at the time of trial first appointed, and that his not being ready is not the effect of such party's own neglect or intention; then the said justice shall order the trial of said cause to be deferred to another day and hour, within ten days to be by him appointed;

and the party praying such continuance, shall pay all the costs occasioned thereby: *Provided*, the justice may <sup>Proviso</sup> at any time continue any case without oath, if the parties consent, or if but one party be present, and shall consent, or if he shall deem it essential to justice so to do, for any good cause shewn.

SEC. 9. When the parties shall appear and be ready <sup>Trial and judgment</sup> for trial, the justice shall proceed to hear and examine their respective allegations and proofs, and shall thereon give judgment against the party, who shall be proved to be indebted to the other, for so much money in dollars and cents, as shall appear to be due, with the costs of suit; but if neither party shall appear to be indebted to the other, then the judgment shall be against the plaintiff for the costs of suit only; and if such judgment be rendered upon any note or bond, or for the balance due upon a settled account, the justice shall allow interest from the time when the same became due, and include the same in the said judgment; and in all cases the judgment shall bear interest at the rate of six per cent. per annum, until paid.

SEC. 10. The justice shall endorse on the back of every summons, or warrant, the sum demanded by the plaintiff, with the costs due thereon, and the defendant may pay the same to the constable in whose hands such process may be, who shall give a receipt therefor, which shall exonerate the defendant from debt and costs. <sup>Endorsement on process</sup>

SEC. 11. All evidence before a justice of the peace <sup>Evidence</sup> shall be under oath, and by parol, except where it shall be necessary to exhibit the signature, or hand writing of a party against him, and except such evidence as shall be taken by deposition, as hereinafter mentioned.

SEC. 12. No party to any suit before a justice shall be permitted to deny his or her signature to any written instrument upon which such suit shall be founded, or which shall be offered as a set-off, or acquittance for the debt demanded in such suit, unless the said denial be under the oath of the party, so denying the signature purporting to be his or her own. <sup>Denial of writing to be under oath</sup>

SEC. 13. If any witness residing within the county wherein a suit shall be pending before a justice, shall be unable to attend on account of age, sickness or other cause, it shall be lawful for the justice before whom such suit shall be pending, or some other justice of the county to take the deposition of such witness in writing; and the justice before whom the suit shall be pending, shall adjourn the trial, not more than six days for that purpose, and shall give both parties notice of the time and place of taking such deposition. <sup>Depositions</sup>

SEC. 14. If any witness whose testimony shall be material in a suit pending before a justice, shall reside out of the county, wherein such suit shall be pending, the party desiring it, may take his, her or their deposition or depositions, before any justice of the peace in the county in which such witness or witnesses reside; and the depositions taken in conformity thereto, may be given in evidence in said suit, if it shall be made to appear that the opposite party had reasonable notice of the time and place of taking such depositions.

Set-off

SEC. 15. No defendant shall be permitted to introduce at the trial as a set-off, any note, bond, debt, or claim against the plaintiff, which such defendant shall have purchased after the commencement of the suit.

All claims to  
be tried in one  
action

SEC. 16. In all suits which shall be commenced before a justice of the peace, each party shall bring forward all his or her demands against the other, which are of such a nature as to be consolidated, and which do not exceed one hundred dollars, when consolidated into one action or defence; and on refusing or neglecting to do the same, shall forever be debarred from the privilege of suing for any such debt or demand.

SEC. 17. When either party shall require the attendance of a witness, in any suit pending before a justice, it shall be the duty of the justice to issue a subpeena in the following form, as nearly as the case will admit, viz:

STATE OF ILLINOIS, } *The People of the State of Illinois, to*  
COUNTY. } *A. B.*

Subpeena for  
witnesses

You are hereby commanded to appear before me at  
on the      day of      at      o'clock,  
then and there to testify the truth, in a matter in suit  
wherein C. D. is plaintiff and E. F. defendant, and this  
you are not to omit under the penalty of the law. Given  
under my hand and seal this      day of      182  
JOHN DOE, J. P.

Which subpeena may be served by a constable, or any other person, by reading the same to the witness, but no mileage shall be allowed to the person serving the same.

Compensation  
to witnesses

SEC. 18. Each witness so summoned, shall be entitled to fifty cents for attending on each trial, to be taxed with the other costs of suit, and paid when the debt and costs are collected; but if more than two witnesses shall be sworn in any case, to testify to one fact on the same side, the party requiring such extra witnesses shall be at the whole expense of procuring the same; but no such fee

shall be taxed by the justice, unless claimed by the witness attending.

SEC. 19. If both parties agree to have a difference decided by a justice of the peace, without process, he shall enter the same on his docket, noting particularly such consent, and proceed as in other cases.

SEC. 20. In all cases the parties to a suit before a justice, shall have the privilege of referring the difference between them, to arbitrators, mutually chosen by them, who shall examine the matter in controversy, and make out their award thereon in writing, and deliver the same to the justice, who shall enter the said award on his docket and give judgment according thereto.

SEC. 21. At any time before judgment is given in any suit before a justice, either party may demand to have the cause tried by a jury, provided the matter in controversy exceed twenty dollars: whereupon it shall be the duty of the justice to issue his writ directed to any constable commanding him to summon a jury of six men, or twelve, if a less number be objected to; and the said jury shall be empanelled as soon as may be, the justice adjourning the cause if necessary to any time not exceeding three days for that purpose. The jury when empanelled, shall be sworn by the justice to try the case according to the evidence; and the justice shall enter judgment upon their verdict, according to the finding thereof. The following shall be the form of the writ for summoning jurors, viz:

STATE OF ILLINOIS, }  
COUNTY, }

The People of the State of Illinois, to any Constable of said County, Greeting:

We command you to summon      lawful men of your county to appear before me at      on the      day of 182      who are not of kin to      plaintiff, or to defendant, to make a jury between said parties in a plea of      because as well the said plaintiff as the said defendant have put themselves upon the country for trial; and have you then there the names of the jury and this writ. Witness my hand and seal this      day of 182

JOHN DOE, J. P.

SEC. 22. In all cases where a witness shall be duly served with a subpoena, and shall fail to attend at the trial, conformably thereto; and in all cases where a person shall be summoned as a juror to try any cause before a justice of the peace, and shall fail to attend at the time and place appointed in such summons, the justice shall have power to issue an attachment, directed to any constable of the

Trial without process

Arbitration

Trial by jury

Venire

Attachment  
against witness-  
ses and jurors

county, commanding him forthwith to bring before such justice, the body of such juror or witness so failing to attend as aforesaid, to shew cause why he should not be fined for such contempt; and on the appearance of such juror or witness on such attachment, it shall be lawful for the justice of the peace to fine him in any sum not less than one dollar nor more than ten dollars, or wholly discharge him, if satisfactory excuse be made.

**SEC. 23.** If any juror summoned as aforesaid shall be interested in the event of the suit or of kin to either party, or shall have expressed his opinion on the matter about to be tried, or shall for any othercause to be judged of by the justice, be considered as a partial or improper juror; in that case the justice shall discharge such juror, and when by such discharge, or the failure of any juror to attend, the jury shall not be complete, the justice shall direct the constable to summon as many persons as shall be required to complete such jury instantly, from among the bystanders or other persons in his bailiwick; which summons shall be verbal; and the persons so summoned shall be bound to serve on such jury, and on refusal or failure to do so, may be attached and fined for contempt as aforesaid.

**SEC. 24.** Every person who shall appear before a justice of the peace when acting as such, or who shall be present at any legal proceeding before a justice, shall demean himself in a decent, orderly and respectful manner; and for failure to do so, such person shall be fined by the said justice for contempt, in any sum not more than five dollars.

**SEC. 25.** Previous to the commencement of any trial before a justice of the peace, the defendant or his or her agent may make oath that it is the belief of such deponent that the defendant cannot have an impartial trial before such justice: whereupon it shall be the duty of the justice, immediately to transmit all the papers and documents belonging to the suit, to the nearest justice of the peace, who shall proceed as if the said suit had been instituted before him.

**SEC. 26.** No execution shall be issued by a justice of the peace, until after the expiration of twenty days from the date of the judgment, on which such execution is to be issued, unless the party applying for the same, or the agent of such party, shall make oath that he believes that the debt will be lost, unless execution be issued forthwith. If such oath be made, then the execution shall be issued immediately, and levied, but no sale of any property, under such execution shall take place within twenty days from the date of the judgment; nor shall the issuing of

Qualification of  
jurors

Fine for misbe-  
haviour

Removal of tri-  
al from one  
justice to another

Execution to  
be stayed 20  
days

such execution deprive either party of the right to appeal.

SEC. 27. All executions issued by a justice of the peace shall be directed to any constable of the proper county, and made returnable to the justice issuing the same, within seventy days from the date; such executions shall be levied only on personal property, and shall be in the following form as nearly as may be, viz:

Execution how issued, &c.

STATE OF ILLINOIS, }  
COUNTY. }

*The People of the State of Illinois, to any Constable of said County, Greeting:*

Form of execu-  
tion

We command you that of the goods and chattels of A. B. in your county, you make the sum of      dollars and      cents debt and      dollars and      cents costs, which C. D. lately recovered before me in a certain plea against the said A. B. and hereof make return to me within seventy days from this date. Given under my hand and seal this      day of      182

JOHN DOE, J. P.

SEC. 28. When it shall appear by the return of any execution issued as aforesaid, that the defendant has not personal property within the county, sufficient to satisfy the debt, and it is desired by the plaintiff to have execution issued to some other county in which it is alleged that the defendant has personal property, the justice shall issue execution directed to any constable of the county, where such property shall be said to be, to which execution, shall be attached an official certificate of the clerk of the circuit court of the county in which the same shall be issued, setting forth, under the seal of said court, that such justice so issuing, was at the time of the issuing of said execution, a justice of the peace, in and for said county; and no constable shall be bound to execute any such process unless so authenticated.

Execution to be  
sue to a foreign  
county.

SEC. 29. When it shall appear by the return of the execution first issued as aforesaid, that the defendant has not personal property sufficient to satisfy the debt and costs within the county, in which judgment was rendered, and it is desired by the plaintiff to have the same levied on real property, in that, or any other county, it shall be lawful for the justice to certify, to the clerk of the circuit court of the county in which such judgment was rendered, a transcript, which shall be filed by said clerk, and the judgment shall thenceforward, have all the effect of a judgment of the said circuit court, and execution shall issue thereon, out of that court as in other cases,

How levied on  
real property

Appeals within  
20 days

SEC. 30. Appeals shall be granted from the judgments of justices of the peace, in all cases, provided the appeal be demanded, and security tendered, within twenty days after the rendering the judgment.

Mode of ap-  
pealing

SEC. 31. When either party shall desire to appeal from the judgment of a justice of the peace, such party shall receive from the justice a copy of the judgment from which he wishes to appeal, and shall produce the same to the clerk of the circuit court of the proper county; and the said party shall within twenty days from the date of the said judgment, enter into bond in the office of said clerk, in a penal sum sufficient to cover said judgment and all costs, with security, to be approved by said clerk; which bond shall be conditioned to pay the debt and costs in case the judgment shall be affirmed on the trial of said appeal; and if upon the trial of any appeal, the bond required to be given by this section, shall be adjudged informal, or otherwise insufficient, the party who executed such bond shall in no wise be prejudiced by reason of such informality or insufficiency: *Provided*, he will in a reasonable time, to be fixed by the court, execute and file in said court a good and sufficient bond.

Clerk to issue a  
supersedeas

SEC. 32. Upon the execution of such bond, the clerk shall issue a *supersedeas*, enjoining the justice and constable from proceeding any further in said suit, and suspending all proceedings in relation thereto, and shall issue a summons to the appellee to appear at the term of the court to which the appeal is returnable, noting therein, the day when the same shall be set for trial; which summons shall be executed ten days before the day of trial, as in other cases.

Appellee not  
appearing cau-  
ses shall be con-  
tinued

SEC. 33. Upon the return of said summons, if it shall appear that the appellee is not found in the county, the court shall continue the case until the next term, and shall then proceed to try the case.

Justice & con-  
stable to stay  
proceedings

SEC. 34. So soon as the clerk shall issue a *supersedeas* as aforesaid, the justice who gave the judgment, and any constable in whose hands an execution or other process may be, in relation thereto, shall suspend all further proceedings thereon; and the said justice shall return all the papers and a transcript of the judgment he had given, to the clerk of said court, with a certificate under his hand, that the said transcript and papers contain a full and perfect statement of all the proceedings before him; and the said court shall hear and determine the said appeal in a summary way, without pleading in writing, according to the justice of the case.

SEC. 35. The circuit court shall at any time admit such

amendments of the papers and proceedings, as may be necessary, to a fair trial of the case upon its merits; and execution may issue on the judgment of said court, in the same manner as if the cause had been originally instituted in said court.

SEC. 36. The judges of the circuit and probate courts shall have power within their respective jurisdictions, and it shall be their duty, upon application, made as hereinafter mentioned, to grant writs of *certiorari* to remove causes from before justices of the peace, into the circuit court, who shall endorse an order for the same, upon the petition of the party praying such writ, and on producing the same to the clerk of the circuit court, he shall issue said writ in conformity to the provisions of this act.

SEC. 37. The petition on application for writs of *certiorari* shall set forth and shew upon the oath of the applicant that the judgment before the justice of the peace, was not the result of negligence in the party praying such writ; that the judgment in his opinion is unjust and erroneous, setting forth wherein the injustice and error consist, and that it was not in the power of the party to take an appeal in the ordinary way, setting forth the particular circumstances which prevented him from so doing.

SEC. 38. No writ of *certiorari* shall issue after the expiration of six months from the rendering of the judgment.

SEC. 39. Before any writ of *certiorari* shall issue, the party applying therefor shall give bond, with security, in the same manner, and with the same conditions, and when the same shall be defective, may be perfected as bonds in cases of appeals from justices of the peace. The writ of *certiorari* shall require the justice to certify to the circuit court, a transcript of the judgment and other proceedings had before him; and in no case shall the justice be required to send up a minute or memorandum of the evidence given before him; but upon the return of said writ, such proceedings shall be had thereon, as in cases of appeals.

SEC. 40. If the judgment of the justice shall be reversed by the circuit court, in whole or in part, such reversal shall not vitiate any sale on execution, which shall have been effected before the issuing of the writ of *certiorari*; but in such cases, the circuit court shall have power to assess the damages, which shall have accrued, in consequence of such sale, and to cause judgment to be entered, or a deduction made therefor; and in all cases of a partial reversal of judgment, either in cases of appeals.

Amendments  
in papers

Certiorari

Petition there-  
for

Limitation to  
writs of certio-  
rari

Bond on certi-  
orari

Substance of  
writ

Reversal of  
judg't not to vi-  
tiate any sale

Damages com-  
puted

Costs

or *certiorari*, the court shall have power to apportion the costs between the parties, according to justice.

Stay of proceedings before justices

SEC. 41. The justice of the peace, constable, and other persons concerned, shall, as soon as the writ of *certiorari* shall be served, stay all further proceedings in that case, until the further order of the circuit court.

Constable to take an oath

SEC. 42. Every constable, before he shall enter upon the duties of his office, shall take the following oath: "I do swear, that I will faithfully discharge the duties of my office, as constable, within the county of      according to the best of my understanding and abilities, so help me God." Which oath shall be taken before the county commissioners' court, or before any justice of the peace of the proper county; and the justice or clerk administering said oath, shall make a certificate thereof, and cause the same to be filed in the office of the clerk of the said court.

and give bond

SEC. 43. Every constable, before he shall enter upon the duties of his office, shall execute and deliver to the clerk of the county commissioners' court, of the proper county, a bond, to be approved by said clerk, with one or more good and sufficient freeholders, as his securities, in the sum of five hundred dollars, conditioned that he will faithfully discharge the duties of his office of constable; and that he will justly and fairly account for, and pay over, all moneys that may come to his hands, under any process or otherwise, by virtue of his office; the said bond shall be made payable to the county commissioners of the county in which such constable shall be appointed, and their successors, for the use of the people of the state of Illinois, and shall be held for the security and benefit of all suitors and other persons who may be interested in, or become injured, by the official conduct of such constable.

within 30 days

SEC. 44. If any constable shall not, within thirty days after his election or appointment, take the oath, and give bond as aforesaid, the said constable shall not be permitted after that time, to be so qualified, or to take his said office; but the said office shall be considered as vacant, and shall be filled accordingly.

Proceedings against constable for not paying over money

SEC. 45. If any constable shall neglect or refuse to pay over, on demand, any money collected by him, to the plaintiff or his agent, the circuit court of the proper county, may, on motion of the party aggrieved, or his attorney, give judgment in favor of such aggrieved party, against such constable, for the amount of the money so by him retained, with twenty per cent. damages thereon, and costs; and execution shall forthwith issue thereon; and the same shall not be replevied: *Provided*, that the said

constable shall have ten days notice, previous to the making of said motion.

SEC. 46. If the demand or debt of any plaintiff shall be wholly or in part lost, by the neglect or refusal to act, of any constable, or if any special damage shall arise to any plaintiff or defendant by the misfeasance or nonfeasance of any such constable, in the discharge of any official duty, the party aggrieved may have his action for damages in the circuit court, against such constable, for the injury so sustained: and shall have judgment and execution, which shall not be replevied.

SEC. 47. Upon the return of any execution issued against a constable, in conformity with either of the two preceding sections, or for any penalty imposed by law upon any constable, if it shall appear that the said execution, or any part thereof, remains unsatisfied, it shall be lawful for the clerk of the circuit court, at the request of the party aggrieved, to issue summons in the nature of a *scire facias*, against the said constable and his securities, commanding them to appear at the next term of the said circuit court, to shew cause, if any they have, why judgment should not be given against them for the amount of the penalty of their said bond; which summons shall be served ten days before the return day thereof; and on the return of said summons, the court shall award judgment against the said constable and his securities, for the whole of the penalty of said bond: after judgment obtained as aforesaid, the court may, from time to time, award execution against the defendants for money withheld or embezzled by said constable; or for penalties recovered of him; or for the amount of any judgment rendered against him for any omission or breach of duty: *Provided*, that no execution shall issue as aforesaid, until after the defendants shall have five days' notice that such execution will be moved for. Said *scieri facias* shall issue on a copy of said constable's bond, which shall be furnished by the clerk of the county commissioners' court, on demand, to the party aggrieved.

SEC. 48. All bonds which shall be given by constables hereafter, shall remain in force until the expiration of five years after the term of service of the constable giving the same shall have been concluded: and where bonds shall be renewed in conformity with an act approved December 30, 1826, entitled "An act to provide for the appointment of justices of the peace and constables," the giving of a new bond by any constable, shall not satisfy or vacate any bond previously given by the same constable; but each bond shall stand good in relation to all matters and

Damages against constable for misconduct

Remedy against the constable and his securities

By *scire facias*

Bonds to be in force 5 years

old bonds not vacated by new ones

things officially done or committed, or which ought to have been so done, within the year for which such bond shall have been given.

Constable to  
keep the peace

SEC. 49. It shall be duty of every constable when any felony or breach of the peace shall be committed in his presence, forthwith to apprehend the person committing the same, and bring him before some justice of the peace, to be dealt with according to law: to suppress all riots and unlawful assemblies, and to keep the peace, and also to serve and execute all warrants, writs, precepts, and other process, to him lawfully directed, and, generally, to do and perform all things appertaining to the office of constable within this state.

Palpable omis-  
sion of duty

SEC. 50. If any justice of the peace, or constable, shall fail, refuse, or neglect to perform any duty appertaining to his office, when required, or shall refuse to act as such justice or constable, when required, he shall be deemed guilty of a palpable omission of duty, and, on conviction, shall be punished accordingly.

Constable pro-  
tem in certain  
cases

SEC. 51. Any justice of the peace may appoint a suitable person to act as constable in a criminal or other case, where there is a probability that a person charged with any indictable offence, will escape, or that goods and chattels will be removed, before application can be made to a qualified constable; and the person so appointed, shall act as constable in that particular case, and no other; and any temporary appointment so made as aforesaid, shall be made by a written endorsement, under the seal of the justice, deputing, on the back of the process, which the person receiving the same shall be deputed to execute.

Lien of judg-  
ments and ex-  
ecutions

SEC. 52. The personal property of every defendant in a judgment, before a justice of the peace, shall be bound for the payment of such judgment, from the delivery of the execution to the constable, issued thereon; and the real property of such defendant shall be bound as aforesaid, from the date of the filing of a transcript of the judgment in the clerk's office, as provided in this act.

Constable to en-  
dorse the time of  
receiving exec-  
ution

Levy of execu-  
tion

And notice of  
sale

SEC. 53. Every constable to whom an execution shall be delivered, shall endorse on the back of the same an exact memorandum of the day and hour when the same shall have come to his hands, and shall immediately proceed to levy the same; endorsing also on the back of the execution the date of such levy, and making an exact inventory of the property on which the same shall have been levied, and shall appoint a day and hour for the sale of said property, giving ten days previous notice of such sale, by advertisement in writing, to be posted up at three of the most public places in the county; and on the day

so appointed, the said constable shall sell the property so levied on, or so much thereof as may be necessary to pay the debt, interest and costs, to the highest bidder.

SEC. 54. Any constable shall be authorized to remove property levied on by him, when it shall be necessary for the safe keeping of the same; *Provided*, that if the defendant shall desire to retain the property so levied on, until the day of sale, it shall be lawful for the said constable to allow the defendant so to keep the same, if said defendant shall give bond to said constable, in double the amount of the execution, with good security, conditioned for the delivery of said property, to the same constable, at the time and place of sale, to be named in said bond; and if the said property shall not be delivered as aforesaid, at the time and place of sale, the constable having the execution, may proceed to levy the same, upon the same or any other property of the defendant, or upon the property of the security in such bond, and shall sell the same, giving two days public notice of such sale, by advertisement to be posted at one public place.

Forthcoming  
bond

SEC. 55. When any person shall be appointed and qualified to act as a constable, it shall be the duty of the clerk of the county commissioners' court, to notify the sheriff of the county of such appointment; and the said sheriff shall keep a list of the constables within his county; and it shall be the duty of each sheriff to summon four constables, (if necessary) of his county, to attend at each term of the circuit court, giving them ten days notice, and taking them in rotation; which constables, when so summoned, shall attend, and act under the sheriff as his deputies, during the sitting of such court; and any constable failing to attend as aforesaid, or refusing to act as such deputy, may be fined by said court for contempt thereof.

Sheriff to be  
furnished with  
list of consta-  
bles

And may sum-  
mon them to  
attend the cir-  
cuit courts

SEC. 56. The justices of the peace within this state, shall have power to administer all oaths required by law, and not particularly directed to be otherwise administered; and where any person who shall be required by law to take an oath shall be conscientiously scrupulous against taking such oath in the usual form, such person may affirm; which affirmation shall have the force and effect of an oath.

Justices may  
administer all  
oaths

and affirmations.

SEC. 57. The following acts, viz: "An act providing for the appointment of constables" approved March 22, 1819: "An act regulating appeals from justices of the peace and further defining their duties," approved February 12, 1821: "An act supplemental to an act regulating appeals from justices of the peace and further defining their duties," approved February 14, 1821: "An act to regulate

Acts repealed

and define the duties of justices of the peace and constables," approved February 18, 1823: "An act regulating the mode of proceeding on writs of *certiorari*," approved January 23, 1825: and so much of the 17th section of "an act concerning judgments and executions," approved January 17, 1825, and of "an act to regulate the taking of delivery bonds and for other purposes," approved January 17, 1825, as relates to the duties of constables: and all acts and parts of acts coming within the spirit and meaning of this act, are hereby repealed. But no suits or rights pending, or arising out of any of said acts, shall be affected or impeded by this act. This act to take effect on the first day of June next.

[Approved, Feb. 3, 1827.]

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## JUSTICES OF THE PEACE AND CONSTABLES.

In force Feb.  
12, 1827

*AN ACT supplemental to the act entitled "An act concerning Justices of the Peace and Constables," passed February 3d, 1827.*

Jurisdiction of  
justices in tre-  
pass and trover

*Be it enacted by the People of the State of Illinois represented in the General Assembly, That justices of the peace shall have jurisdiction, in addition to the jurisdiction conferred on them by the act entitled "An act concerning justices of the peace and constables," passed February 3d, 1827, in all actions of trespass on personal property, and in all actions of trover and conversion, when the damages claimed in any of the above specified actions do not exceed twenty dollars.*

[Approved, Feb. 12, 1827.]

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## JUSTICES OF THE PEACE.

In force 1st  
May, 1827

*AN ACT to extend the jurisdiction of Justices of the Peace.*

Jurisdiction in  
case of assault  
and battery

*SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That hereafter the justices of the peace of the several counties of this state, shall have jurisdiction of all cases of assaults, and of assault and battery, and affrays: and upon the knowledge of any justice of the peace, or information of any person upon oath (except the party offending) shall issue his warrant to any constable of said county, for the arrest of*

such person as may be charged with either of said offenses; and upon the arrest of such person, shall order the constable attending the trial, to summon six jurors of the neighborhood, not in any wise related to either of the parties (unless the party accused shall dispense with such jury or require twelve, in which case twelve jurors shall be summoned) which jury, when summoned, shall attend, and after being sworn, if they find the defendant guilty, shall assess the fine such defendant shall pay: *Provided*, the same shall not exceed one hundred dollars, nor be less than three dollars.

SEC. 2. That upon the jury returning their verdict of guilty, and the assessment of the fine, the justice shall record the same in his docket or record book, and proceed to render judgment thereon for the amount of the said fine and costs; but if the jury return a verdict of not guilty, the justice shall record the same, and discharge the defendant or defendants without costs.

SEC. 3. That upon the rendition of such judgment, the justice shall immediately issue execution against the said defendant or defendants, for the amount of the fine, and all costs; which said execution may be levied upon any personal property of said defendant or defendants, and the same shall be sold for whatever it will bring in cash, the constable giving twenty days public notice of the day of sale, by putting up written advertisements at three of the most public places in the county: *Provided, however, that if the party convicted under this act, have a family, then the constable shall reserve from execution, one bed and bedding, one cow, and ten dollars worth of household and kitchen furniture.*

SEC. 4. If the constable shall return upon such execution, that the defendant or defendants have no goods and chattels whereof to make the money, the justice shall issue a *capias* against the body of the defendant or defendants, and the constable shall arrest such person or persons, and commit him or them to the jail of the county, there to remain forty-eight hours; and if the fine exceed ten dollars, then to remain in said jail twenty-four hours for every five dollars over and above the said ten dollars, and so on in proportion to the amount of said fine.

SEC. 5. If any person who shall be convicted under this act shall wish to appeal to the circuit court, he shall signify the same to the justice of the peace who gave the judgment, and the justice shall give him a statement of the amount of the fine and costs: and upon producing the same to the clerk of the circuit court of the proper county, the clerk shall write a bond to the people of the state

*Appeal, and  
proceedings  
therein*

of Illinois, in a penalty double the amount of the fine, and a sufficiency to cover all costs, conditioned for the payment of the amount of whatever judgment the court may render against said defendant, which the said party appealing shall execute, with sufficient security, to be approved of by the said clerk: and when such bond shall be executed, the clerk shall notify the justice who tried the cause thereof, and the said justice shall stay all further proceedings, and return the papers to the next succeeding circuit court, when the same shall be tried, unless for good cause shewn, the court shall continue it: *Provided* all such appeals shall be prayed for, and the bond executed, within five days after judgment rendered.

Judg't of cir't  
court

SEC. 6. If the defendant shall be found guilty in the circuit court, (where the trial shall be by jury) judgment shall be rendered against both principal and security in the appeal bond, for the amount of the fine assessed by the jury in said court, and all costs that may have accrued.

Appeal in be-  
half of the peo-  
ple and pro-  
ceedings there  
in

SEC. 7. If any person shall be dissatisfied with the verdict of the jury given before any justice of the peace, because of the fine being too low, or because the defendant may have been acquitted, he shall be permitted to remove the said case into the circuit court, upon his executing bond to the people of the state of Illinois, before the clerk, (which bond the clerk shall write) in a penalty sufficient to cover all costs that have or may accrue, conditioned for the payment of all costs, in case the defendant shall be acquitted, or the fine not increased; which bond shall be executed in ten days after the judgment of the justice shall have been given; and when said bond is executed, the clerk shall notify the justice thereof, and said justice shall return all the proceedings to the said court: and if the defendant shall be acquitted in the circuit court, or the fine not increased by the jury, the court shall render judgment against the party who removed the said case into the circuit court, and his security in the appeal bond, for all costs occasioned by the appeal: *Provided* the party removing a case into the circuit court shall never be a witness against the defendant in the appeal in said court, upon the trial of such appeal.

Judg't of cir-  
cuit court

Party appeal-  
ing not be a  
witness

Witnesses'  
names returned  
to circuit court

Summons and

SEC. 8. When the defendant appeals to the circuit court, it shall be the duty of the justice, to return to the clerk when he returns the papers, the names of all material witnesses who testified against the said defendant, and the clerk shall issue subpoenas for the same.

SEC. 9. When the case is removed into the circuit court, as provided by the seventh section of this act, the party

removing it shall cause a summons to be issued and served upon the defendant, notifying him of the appeal; and if the defendant cannot be found in the county, to serve said process upon, the case shall not be continued; but the court shall cause his appearance to be entered, and proceed to trial, as though the defendant were present, and had filed the plea of not guilty.

SEC. 10. Upon the trial of appeals, no exception shall be allowed to any process which the justice may have issued, but all appeals shall be tried upon their merits. And it shall be the duty of the attorney general and circuit attorney, of the proper county, to prosecute in all such cases of appeals, without fee.

SEC. 11. If the person accused, shall, upon his appearance before such justice, confess himself guilty of the charge against him, and dispense with the trial by jury, the justice shall hear the evidence, assess the fine, and render judgment thereon, and issue execution, as before directed, subject to appeal, as before provided for: *Provided*, he shall not assess a higher fine than one hundred dollars, nor lower than three dollars.

SEC. 12. All the offences before described, which shall have been committed before this act takes effect, shall be proceeded upon, tried, and punished, according to the laws in existence at the time of their commission.

SEC. 13. No person shall be proceeded against for the commission of any of the offences herein enumerated, after the expiration of twelve months from the time the offence was committed; unless such offender shall withdraw himself from the county for the purpose of avoiding trial, in which case he shall be tried at any time within twelve months after his return or apprehension.

SEC. 14. The constable charged with the collection of any fine under this act, shall account for and pay over to the county commissioners' court, at every regular term thereof, all moneys which he may have collected under this act; and upon a failure to do so, he shall forfeit and pay double the amount of money so received; to be recovered in the name of the county commissioners of the proper county, for the use of the county, in any court having jurisdiction thereof. The constable shall also be authorised to receive all fines before execution issued, and shall account therefor and pay over the same, in the same manner, and under the same penalties as before provided.

SEC. 15. And it shall be the duty of each of the justices of the several counties to return to the county commissioners' court, at each regular term thereof, a list of all fines before them assessed, stating the name or names

Exceptions to  
justices' papers  
not allowed

Duty of att'y  
gen'l and cir-  
cuit att'y

Confession of  
defendant

Offences com-  
mitted before  
this act takes  
effect

Limitations to  
prosecutions

Constable to  
pay over fine

Justices to fur-  
nish a list of  
fines to com'r's  
court

of the defendant or defendants, and of the constable or constables charged with the collection of said fine or fines, to enable the said court to settle with the said constables: and a failure of any such justice before whom any fine shall have been assessed under this act, to make such return, shall work a forfeiture of double the amount of the fines assessed before him, to be recovered as prescribed in the preceding section.

SEC. 16. The county commissioners' court shall pay over to the county treasurers, respectively, all moneys by them received as aforesaid, and take his receipt therefor; which receipt shall be deposited with the clerk of said court, and by him preserved. And the county treasurer shall account for said moneys in the same manner that he accounts for other public money by him received.

SEC. 17. That no charge for jurors' or witnesses' fees shall be allowed either before the justices, or in the circuit courts.

SEC. 18. All laws and parts of laws coming within the purview of this act, be, and the same are hereby repealed. This act to take effect and be in force, from and after the first day of May next.

[Approved, Dec. 29, 1826.]

No charge for  
jurors or wit-  
nesses

Laws repealed

In force June 1  
1827

Action of debt  
to recover rent

Tenants hold-  
ing over

## LANDLORDS AND TENANTS.

### *AN ACT concerning Landlords and Tenants.*

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That in all cases where rent may be due and in arrear, on a lease for life or lives, and where lands shall be held and occupied by any person without any special agreement for rent, it shall and may be lawful for the owner or owners of such lands, or his, her or their executors or administrators, to sue for and recover such rent, or a fair and reasonable satisfaction for such use and occupation, by action of debt or assumpsit in any court having jurisdiction thereof.

SEC. 2. If any tenant or tenants for life, lives or for years, or any person or persons, who are, or shall come into possession of any lands, tenements or hereditaments, by, from or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, tenements or hereditaments, after the expiration of such term or terms, and after demand made, and notice in writing given, for the possession thereof, by his, her or their landlord or land-

lords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, such person or persons so holding over, shall for the time such landlord or rightful owner, be so kept out of possession, pay to the person or persons so kept out of possession, or their legal representatives, at the rate of double the yearly value of the lands, tenements or hereditaments so detained, as aforesaid, to be recovered by action of debt or otherwise, in any court having cognizance of the same.

SEC. 3. If any tenant or tenants, shall give notice of his, her or their intention to quit the premises, by him, her, or them holden, at a time mentioned in such notice, at which the tenant would have a right to quit by the lease, and shall not accordingly deliver up possession thereof; the said tenant or tenants, shall pay to the landlord or lessor, double the rent or sum which would otherwise have been due, to be collected in the same manner as the rent otherwise due should have been collected.

SEC. 4. In all cases between landlord and tenant, where one half year's rent shall be in arrear, and unpaid, and the landlord or lessor, to whom such rent is due, has right by law to re-enter for non-payment thereof; such landlord or lessor, may, without any formal demand or re-entry, commence an action of ejectment for the recovery of the demised premises. And in case judgment be given for the plaintiff in such action of ejectment, and the writ of possession thereon be executed theron, before the rent in arrear and costs of suit be paid; then the lease of such lands shall cease and be determined, unless such lessee or lessees, shall by writ of error reverse the said judgment, or shall by bill filed in chancery, within six months after the rendition of such judgment, obtain relief from the same: *Provided*, that any such tenant or tenants, may at any time before final judgment, on said ejectment, pay or tender to the landlord or lessor of the premises, the amount of rent in arrear and costs of suit, and the proceedings on such ejectment shall thereupon be discontinued.

SEC. 5. Every tenant, who shall at any time, be sued in ejectment by any person, other than his or her landlord, shall forthwith give notice thereof to his or her landlord, or to his or her agent or attorney, under the penalty of forfeiting two year's rent of the premises in question, or the value thereof, to be recovered by such landlord, by action of debt in any court having cognizance thereof.

SEC. 6. When any goods or chattels shall be distrained for rent, and the tenant or owner of the goods so distrained, shall not within five days after such distress taken,

Tenants holding after giving notice

Where half year's rent is due and unpaid lessor may bring ejectment

Tenants to give notice to their landlords when sued

Distress for rent how to proceed

and notice thereof, and the cause of taking, replevy the same, with sufficient security according to law; the person distraining or his agent duly authorized, may with the sheriff or constable of the county, cause the goods and chattels so distrained, to be appraised, by two reputable freeholders, under oath; which oath may be administered by such sheriff or constable, to appraise said goods and chattels, according to their best judgment and understanding; the person making such distress on giving ten days notice, may sell such goods and chattels at public auction, and after retaining the amount of rent distrained for, and the costs of distress and sale, shall pay the overplus, if any there be, to such tenant or tenants.

*Acts repealed* SEC. 7. This act repeals an act, as to proceedings in ejectment, distress for rent, and tenants at will holding over, approved February 23, 1819; but rights acquired under that act are not hereby affected. This act shall take effect on the first day of June next.

[Approved, Feb. 13, 1827.]

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### LAND CERTIFICATES.

*In force Dec. 28, 1826* AN ACT to revive an act authorizing the conveyance of Land Certificates in certain cases.

SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That an act entitled "An act authorizing the conveyance of land certificates in certain cases," approved January 10th, 1825, is hereby declared to be revived, and to continue in force until the 7th day of July next. This act to take effect and be in force from and after its passage.

[Approved, Dec. 28, 1826.]

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### LAWS.

*In force Dec. 26, 1826* AN ACT prescribing the manner of authenticating acts of the general assembly, which may become laws notwithstanding the objections of the Council of Revision.

Law returned  
by the council  
and repassed,  
how authenti-  
cated

SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That whenever a bill, which shall have passed both houses of the general assembly, shall be returned by the council of revision, with ob-

objections thereto, and upon reconsideration, shall pass both houses by the constitutional majority, it shall be authenticated as having become a law, by a certificate thereon, to the following effect: "This bill having been returned by the council of revision with objections thereto, and after reconsideration, having passed both houses, by the constitutional majority, it has become a law, this      day of which being signed by the speakers of the senate and of the house of representatives, respectively, shall be deemed sufficient authentication thereof; whereupon the bill shall be presented to the governor, to be by him deposited with the laws, in the office of the secretary of state.

Sec. 2. Every bill which shall have passed both houses of the general assembly, and shall not be returned by the council of revision within ten days, having thereby become a law, shall be authenticated by the governor, causing the fact to be certified thereon by the secretary of state, in the following form: This bill having remained with the council of revision ten days (sundays excepted) and the general assembly being in session, it has become a law, this      day of

G. F. Secretary of State.  
[Approved, Dec. 26, 1826.]

Bills which become laws if not returned in ten days, &c.

## LAWS.

*AN ACT to provide for the publication of the revised and other laws of this state, passed at the present session of the General Assembly.* In force Feb. 19, 1827

Sec. 1. Be it enacted by the People of the State of Illinois represented in the General Assembly, That there shall be published an edition of two thousand copies of the revised laws of this state, which shall contain the following acts, to-wit: The declaration of independence of the United States; the articles of confederation of the United States; the constitution of the United States with the amendments; the constitution of the state of Illinois; a resolution of congress declaring the admission of the state of Illinois into the Union; and all acts of a public, permanent and general nature, passed, or to be passed, at the present session of the general assembly, except such acts or parts of acts, as shall have been repealed before the close of said session, arranged under proper heads, in alphabetical order, according to their subject matter. There shall be prefixed to the volume a table of contents; and at the

Revised code  
how to be published

end of the same, shall be added a full and complete index.

Marginal notes, &c. SEC. 2. The laws required by the preceding section to be published, shall be comprised in one octavo volume, with marginal notes, and the day when each act takes effect shall be stated in the margin opposite the title, and the day on which the same was approved by the council of revision, or when it became a law, notwithstanding their objections, shall be stated at the end of the act, omitting the name and style of the governor, and of the speakers of the two houses of the general assembly.

Secretary of state to superintend printing

SEC. 3. The secretary of state shall superintend the printing of all laws, and other acts, required by this act to be published, carefully comparing the proof sheets with the enrolled laws on file in his office, and causing all typographical errors, and errors in copying, which may be discovered in any page, to be corrected, before the same shall be printed.

Authorized to contract for binding

SEC. 4. The secretary of state is hereby authorized to contract with some person to bind the whole, or a part of the edition of revised laws, hereby required to be published, in good half binding, with leather backs and corners, and lettered with the words "revised laws of Illinois;" and he shall use his best endeavors to have said binding done so soon as practicable, and on the most advantageous terms for the interest of the state.

How to distribute them

SEC. 5. The secretary of state, on the completion of the printing and binding as aforesaid, of said revised laws, shall reserve two hundred and fifty copies thereof, in his office, subject to the future disposition of the general assembly. He shall transmit to the secretary of state of the United States, for the use of the general government, five copies; and to the executive of each state, for the use of such state, two copies. He shall cause to be delivered to the governor, lieutenant-governor, auditor of public accounts, state treasurer, cashier of the principal bank, justices of the supreme court, attorney general, circuit attorneys, secretary of the senate, clerk of the house of representatives, engrossing and enrolling clerks of the two houses, one copy each. He shall transmit by some person or persons, with whom he may contract for the purpose, a sufficient number of copies to the clerk of the commissioners' court of each county to be distributed among the civil officers of the county, allowing one for each judge of probate, county commissioner, coroner, clerk of a court, county treasurer, sheriff, justice of the peace, county surveyor, constable and member of the general assembly, residing in the county; and there shall also be delivered to the clerk

of the circuit court of each county, two copies for the use of the court, grand jury and bar; and the surplus copies if any, shall be by said clerk of the county commissioners' court, carefully kept and preserved, to be distributed as may hereafter be directed by law.

SEC. 6. The clerks of the several county commissioners' courts, on receiving the revised laws for distribution as aforesaid, shall give their receipts for the same; which receipts shall be filed in the secretary's office, by the person by whom said laws were distributed, before he shall be entitled to payment for distributing the same.

SEC. 7. The clerks of the several county commissioners' courts, shall upon the request of any officer, entitled to a copy of said laws as aforesaid, deliver to him one copy, taking his receipt for the same; but no person shall be entitled to more than one copy, although he may hold several offices.

SEC. 8. Upon the expiration of the term of service, resignation or removal from office, of any county officer (members of the general assembly excepted,) it shall be his duty to return to the office of the clerk of the commissioners' court, for the use of his successor in office, the copy of the revised laws received by him, in pursuance of this act; and in case of the death of any such county officer, the said copy of the laws, shall be returned as aforesaid, by his executors or administrators. If an such officer, his executors or administrators, shall refuse or neglect for three months after the happening of such vacancy as aforesaid, to return said copy of the laws to the clerk of the commissioner's court, then it shall be the duty of said clerk to sue for the same before some justice of the peace; and he shall recover for the use of the county, the sum of four dollars for each copy so detained, with costs of suit. No person however, while he continues to hold any office, which entitles its incumbent to a copy of the laws, shall be required to return his copy of the same as aforesaid.

SEC. 9. There shall also be published in pamphlet form under the superintendence of the secretary of state as aforesaid, five hundred copies of all laws passed at the present session of the general assembly, which are of a local, private or temporary nature. There shall be added to the laws required by this section to be published, an accurate account of the receipts and expenditures of the public moneys for the two last years, as required by the constitution of this state. And the secretary of state is authorized and required to contract with some person or persons, on the best terms he can procure, to print, fold and stitch the laws and other documents, required

Clerks of commissioners' court how to dispose of them

Officers to return them upon the expiration of term of service

Secretary of state to have 500 copies of private acts printed

## LIMITATIONS.

by this section to be published. He shall retain fifty copies thereof in his office, and transmit or deliver to the governor, lieutenant governor, auditor, state treasurer, cashier of the principal bank, judges of the supreme court, attorney general and circuit attorneys, one copy each. The remaining copies he shall apportion among the several counties, according to the number of white inhabitants therein; and cause them to be delivered either with the revised laws, or with the journals, to the county commissioners' clerks of the several counties, to be received for, and distributed in the manner herein provided for the distribution of the revised laws.

SEC. 10. On the fulfilment of any contract for printing, binding, folding and stitching, or distributing the revised or other laws, the secretary of state shall certify the fact to the auditor, who shall issue his warrant on the treasurer for the sum due, in favor of the person or persons entitled to compensation.

SEC. 11. Hereafter, all payments made for debts due the state, for Vandalia lots heretofore sold, or which may hereafter be sold, in judgments against the state for Perryville lots, shall be received at the rate of state paper; any law to the contrary notwithstanding.

SEC. 12. That for the next two years, it shall be the duty of each of the judges of the supreme court, to note down from time to time, when there shall appear any inconsistencies or imperfections in the legislative acts of this state, and to make a detailed report thereof to the next general assembly; for which service, they shall receive for the years 1827 and 1828 only, two hundred dollars each per annum, payable quarter yearly, on the warrant of the auditor, out of the state treasury. This act to take effect from and after its passage.

[Approved Feb. 19, 1827.]

\$200 per annum allowed the supreme judges for noting imperfections in the laws

In force June 1,  
1827

Limitation of actions

## LIMITATIONS.

*AN ACT for the Limitation of Actions and for avoiding vexatious Law Suits.*

SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all actions of trespass *quare clausum fregit*, all actions of trespass, detinue, trover, and replevin, for taking away goods and chattels, all actions for the arrearages of rent, due on a parcel de-

mise, and all actions of account, and upon the case, except actions for slander, and except also actions for malicious prosecution, and such actions as concern the trade of merchandize, between merchant and merchant, their factors or agents, shall be commenced within five years next after the cause of such actions shall have accrued, and not after.

SEC. 2. That all actions of trespass for assault, battery, wounding and imprisonment, or any of them, shall be commenced within two years next after the cause of such actions shall have accrued, and not after.

SEC. 3. That every action upon the case for words, shall be commenced within one year next after the words spoken, and not after; and every action for malicious prosecution, shall be commenced within two years next after the cause of action shall have accrued, and not after.

SEC. 4. That every action of debt or covenant for rent or arrearages of rent, founded upon any lease under seal; and every action of debt or covenant, founded upon any single or penal bill, promissory note, or writing obligatory, for the direct payment of money, or the delivery of property or the performance of covenants; or upon any award under the hands and seals of arbitrators, for the payment of money only, shall be commenced within sixteen years, after the cause of such action shall have accrued, and not after; but if any payment shall have been made on any such lease, single or penal bill, promissory note, writing obligatory or award, within or after the said period of sixteen years; then an action instituted on such lease, single or penal bill, promissory note, writing obligatory or award, within sixteen years after, such payment shall be good and effectual in law, and not after.

SEC. 5. That judgment in any court of record in this state, may be revived by *scire facias*, or an action of debt may be brought thereon, within twenty years next after the date of such judgment, and not after.

SEC. 6. That no person who now hath, or hereafter may have any right of entry, into any lands, tenements, or hereditaments, shall make an entry therein, but within twenty years next after such right shall have accrued, and such person shall be barred from any entry afterwards.

SEC. 7. That every real possessory, ancestral or mixed action, or writ of right, brought for the recovery of any lands, tenements or hereditaments, shall be brought within twenty years next after the right or title thereto, or cause of such action accrued, and not after: *Provided*, Actions brought within 20 years *Proviso* that in all the foregoing cases in this act mentioned, where the person or persons who shall have right of entry, title

Right of entry  
barred after 20  
years

## LIMITATIONS.

or cause of action is, are or shall be, at the time of such right of entry, title or cause of action, under the age of twenty-one years, insane, beyond the limits of this state or *feme covert*, such person or persons may make such entry, or institute such action, so that the same be done, within such time as is within the different sections of this act limited, after his or her becoming of full age, sane, *feme sole*, or coming within this state.

*Absence not to be accounted, in certain cases*

SEC. 8. That if any person or persons, against whom there is or shall be any cause of action, as is specified in the preceding sections of this act, except real or possessory actions, shall be out of this state, at the time of the cause of such action accruing, or any time during which a suit might be sustained, on such cause of action, then the person or persons who shall be entitled to such action, shall be at liberty to bring the same against such person or persons, after his, her, or their return to this state, and the time of such person's absence shall not be accounted or taken as a part of the time limited by this act.

*Effect of reversal of judgment upon writ of error or appeal, &c.*

SEC. 9. That if in any of the said actions, specified in any of the preceding sections of this act, judgment be given for the plaintiff, and the same be reversed by writ of error, or upon appeal, or if a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff; or if the plaintiff be non-suited, then, if the time limited for bringing such action shall have expired during the pendency of such suit, the said plaintiff, his or her heirs, executors or administrators, as the case shall require, may commence a new action, within one year after such judgment reversed or given against the plaintiff, and not after.

*Acts repealed*

SEC. 10. The eighth section of the act entitled "An act regulating the practice in the supreme and circuit courts of this state, and for other purposes," approved March 22d, 1819; and the act entitled "An act of limitations, relating to lands and tenements," approved February 18th, 1823, be, and are hereby repealed: *Provided* that the rights and defences, which have accrued or arisen under the acts hereby repealed, shall not be affected or impaired by the passage of this act: *Provided further*, that where the acts hereby repealed have commenced running, the time the same shall have run against any cause of action hereby limited, shall be computed part of the time limited, by this act. This act to take effect and be in force, on the first day of June next.

*Approved, Feb. 10, 1827.*

*AN ACT to regulate proceedings on Writs of Mandamus.* In force June 1, 1827

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the respective circuit courts in this state shall have power to issue writs of *mandamus*. Appeals may be taken from the decision of the said courts, upon such terms as the said circuit courts shall prescribe; or writs of error may be prosecuted whenever the supreme court or any of the judges thereof, in vacation, upon being presented with a copy of the record, shall certify that there is reasonable cause for the bringing of such writ; and the said supreme court or judge in vacation, may impose such terms and conditions upon the party wishing to prosecute such writ of error, as the said court or judge may deem reasonable. The allowance of a writ of error shall operate, after notice thereof, as a stay of proceedings in the circuit court, until the determination of such writ of error.

SEC. 2. Where any writ of *mandamus* shall be issued out of any court of this state, directed and delivered to any person or persons, who by the laws of this state, are required to make return of such writ, such person or persons shall make his or their return to the first writ of *mandamus*.

SEC. 3. When any writ of *mandamus* shall issue out of any court of this state, and return shall be made thereunto, it shall be lawful for the person or persons suing or prosecuting such writ, to plead to or traverse all or any of the material facts contained in such return, to which the person or persons making such returns shall reply, take issue, or demur, and such further proceedings shall be had therein, and in such manner, for the determination thereof, as might have been had, if the person or persons suing out such writ had brought his or their action on the case for a false return. If any issue shall be joined upon such proceedings, the person or persons suing such writ, shall and may try the same in such place as an issue joined on such action on the case, should or might have been tried. In case a verdict shall be found for the person or persons suing such writ, or judgment given for him or them upon a demurrer, or by *nil dicit*, or for want of a replication, or other pleading, he or they shall recover his judgment or their damages and costs, in such manner as he or they might have done in an action on the case, as aforesaid; such damages and costs shall and may be levied by execution as in other cases; and a peremptory writ of *mandamus* shall be granted without delay for him or them for whom judgment shall be given, as might have been if

Return to the  
first writ

The return  
may be traversed

and issue shall  
be joined

Damages and  
costs

Peremptory  
writ

if

## MARRIAGES.

such return had been adjudged insufficient. In case judgment shall be given for the person or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in manner aforesaid.

Recovery of  
damages a bar  
to action on the  
case

SEC. 4. If any damages shall be recovered by virtue of this act, against any person or persons making such returns to such writ, as aforesaid, he or they shall not be liable to be sued in any other action or suit for the making of such return; any law, usage, or custom to the contrary notwithstanding.

Time may be  
allowed to re-  
turn, plead, re-  
ply, take issue  
or demur

SEC. 5. It shall and may be lawful to and for the court issuing any writ of *mandamus*, to allow to such person or persons respectively to whom such writ shall be directed, or to the person or persons who shall sue or prosecute the same, such convenient time respectively to make return, plead, reply, rejoin, or demur, as to the said court shall seem just and reasonable; any thing herein contained to the contrary notwithstanding. This act to take effect on the first day of June next.

[Approved, Jan. 6, 1827.]

*Approved, Jan. 6, 1827.*

## MARRIAGES.

## AN ACT concerning Marriages.

In force June  
1st, 1827

Who may con-  
tract marriage

Consent of pa-  
rents

Modes of cele-  
brating mar-  
riage allowed

Who authoriz-  
ed to perform  
the marriage  
ceremony

Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all male persons over the age of seventeen years, and females over the age of fourteen years, may contract and be joined in marriage: Provided, in all cases where either party is a minor, the consent of parents or guardians, be first had, as is herein-after required.

SEC. 2. All persons belonging to any religious society, church, or denomination, may celebrate their marriage, according to the rules and principles of such religious society, church or denomination; and a certificate of such marriage, signed by the regular minister, or if there be no minister then by the clerk of such religious society, church or denomination, registered as hereinafter directed, shall be evidence of such marriage.

SEC. 3. Any persons wishing to marry, or be joined in marriage, may go before any regular minister of the gospel, authorized to marry by the church or society to which he belongs, any justice of the supreme court, judge of any inferior court, or justice of the peace, and celebrate or declare their marriage, in such manner and form as

shall be most agreeable. And such minister of the gospel, justice of the supreme court, judge, or justice of the peace, shall make a certificate of such marriage, and return the same, with the license, to the clerk of the county commissioners' court, who issued such license, within thirty days after solemnizing such marriage; and the clerk, after receiving such certificate, shall make a registry thereof, in a book to be kept by him for that purpose only; which registry shall contain the christian and surnames of both the parties, the time of their marriage, and the name of the person certifying the same; and said clerk shall at the same time, endorse on such certificate, that the same is registered, and the time when; which certificate shall be carefully filed and preserved; and the same, or a certified copy of the registry thereof, shall be evidence of the marriage of the parties.

SEC. 4. No person shall be joined in marriage, as aforesaid, unless their intention to marry shall have been published at least two weeks previous to such marriage, in the church or congregation to which the parties, or one of them belong; or unless such persons shall have obtained a license, as herein provided.

SEC. 5. In all cases, when publication of such intention to marry has not been made, as before described, the parties wishing to marry, shall obtain a license from the clerk of the county commissioners' court of the county where such marriage is to take place; which license shall authorize any regular minister of the gospel, authorized to marry by the church or society to which he belongs, any justice of the supreme court, judge, or justice of the peace, to celebrate and certify such marriage; but no such license shall be granted, for the marriage of any male under twenty-one years of age, or female under the age of eighteen years, without the consent of his or her father, or if he be dead or incapable, of his or her mother or guardian, to be noted in such license; and if any clerk shall issue a license for the marriage of any such minor, without consent, as aforesaid, he shall forfeit and pay the sum of three hundred dollars, to the use of such father, mother, or guardian, to be sued for and recovered in any court having cognizance thereof; and for the purpose of ascertaining the age of the parties, such clerk is hereby authorized to examine either party, or other witness on oath.

SEC. 6. If any clerk shall for more than one month, refuse or neglect to register any marriage certificate which has been or may hereafter be delivered to him for that purpose, (his fee therefor being paid) he shall be liable to be removed from office, and shall moreover pay the sum

Certificate

Registry

what it shall contain

Evidence of marriage

Publication of banes

License

not to issue license  
less by consent  
of parents, &c.Penalty for issuing license  
without such consent

Neglect to register marriage certificate

## MILITIA.

of hundred dollars, to the use of the party injured, to be recovered by action of debt, in any court having cognizance of the same.

**Penalty for not returning certificate**

SEC. 7. If any minister, justice of the supreme court, judge, or justice of the peace, having solemnized a marriage, or clerk of any religious society, as the case may be, shall not make return of a certificate of the same, as required, within the time limited, to the clerk of the commissioners' court, of the county in which such marriage was solemnized, he shall forfeit and pay one hundred dollars for each case so neglected; to go to the use of the county; to be recovered by indictment. And if any minister of the gospel, justice of the supreme court, judge, or any other officer or person, except as hereinbefore excepted, shall solemnize and join in marriage any couple without a license, as aforesaid, he shall, for every such offence, forfeit and pay one hundred dollars, to the use of the county, to be recovered by indictment.

**Acts repealed**

The act entitled "An act regulating marriages," approved February 20th, 1819, is hereby repealed; but rights acquired, and forfeitures incurred, under that act, are not hereby affected. This act to take effect on the first day of June next.

*Approved Feb. 14, 1827.*

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MILITIA.

**In force Feb. 9, 1827**

*AN ACT in addition to the act entitled "An act for the organization and government of the Militia of this State, approved January 25, 1826."*

**Independent companies to muster with the regiment**

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That it shall be the duty of all independent companies in this state, cavalry and artillery companies excepted, to muster with the regiment or odd battalion, (as the case may be,) of the county to which they may belong, at all musters of such regiment or battalion; unless expressly permitted, by the officer exercising the command of such regiment or battalion to do otherwise: Provided, that nothing herein contained, shall be construed to exempt any such company of cavalry or artillery, as aforesaid, from a strict obedience to the orders of the commandant, for the time being, of the regiment or battalion to which they may be attached.*

SEC. 2. The company musters of such companies as shall compose the third battalion, in any of the regiments

in this state, shall be held on the third Saturdays in the months of April and June in each year.

Company masters of the 3d battalion

Elections

SEC. 3. All elections for a major general or brigadier general, shall be held by the commissioned officers, and such as may be entitled to commissions, of the several regiments and odd battalions, composing the division or brigade, wherein such elections shall be ordered to be held, at their usual place of holding regimental and odd battalion musters, respectively; and all election for colonels, lieutenant colonels, majors, captains, and subaltern officers, shall be held by the officers and militia men, composing the regiment, battalion, or company (as the case may be) wherein such election shall be ordered to be held, at the usual place or places of holding company musters, respectively, unless the officer ordering such election, shall direct the same to be held at a different place.

Election of judges & clerks

SEC. 4. It shall be the duty of the officers or militia men (as the case may be) at all such elections of officers as aforesaid, when assembled at the place where the same shall be directed to be held, to proceed to elect from among themselves, three judges and one clerk of the election; who shall, previous to the commencement of the election, severally take an oath before some justice of the peace, or commissioned officer of the militia, in the following form, to wit: You and each of you do solemnly swear, (or affirm,) that you will faithfully and impartially receive, count, and make return, of all the votes legally given to each person who may be voted for at the present election, so help you God. After which, the said judges and clerk, shall, between the hours of ten o'clock, A. M. and five o'clock P. M. proceed to open polls, and receive the votes of all qualified electors, who may legally apply to give the same; and shall make return thereof, in manner and form as is hereinafter directed, and as is prescribed in the eleventh section of the act to which this is an addition.

Their oath

Proceedings at elections

SEC. 5. At all militia elections, hereafter to be held in this state, the electors shall vote by ballot; they shall bring their votes, legibly written or printed on a single piece of paper, with the names at full length, and the officers designated for which such votes are given, and shall deliver the same to one of the judges of the election, who shall put the same in a ballot box, or other place for safe keeping, until the whole shall be taken and counted out. And as often as any ballot shall be delivered to the judges, as aforesaid, it shall be the duty of the clerk to set down in a poll book, to be provided for that purpose, the name of the elector delivering the same: which said poll book

Elections by ballot

Form of poll  
book

shall be in the following form, to wit: A POLL BOOK of an election held at        in the county of        in the regiment of Illinois militia, on the        day of        one thousand eight hundred and

NAMES OF VOTERS.

| NAMES OF VOTERS.

Imperfect bal-  
lots not to be  
rejected

*Provided*, that no ballot shall be rejected on account of any misspelling, or abbreviation of the name of the person voted for, or for an omission to designate the office, where it shall evidently appear to the judges, for whom the vote was intended.

SEC. 6. When all the votes at any militia election shall have been given, and counted out, as aforesaid, it shall be the duty of the judges, to cause their clerk to make out a return thereof as near as may be in the following form, to wit:

Form of elec-  
tion return

"At an election held at        in the county of        in the        regiment of Illinois Militia, on the        day of        in the year one thousand eight hundred and the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit:

A. B. had	votes for Major General.
C. D. had	votes for Major General.
E. F. had	votes for Colonel.
G. H. had	votes for Colonel.

And in like manner for all other officers.

Certified by us

A. B.)	
C. D.)	Judges of election.
E. F.)	

Attest

J. H. Clerk of election."

To whom the  
returns to be  
made

After which, the judges of the election shall cause the poll book to be transmitted to the adjutant of the regiment (or odd battalion, as the case may be) to be by him filed with the records in his office; and in case of any contested election, it shall be the duty of the adjutant, to transmit the same to the presiding officer of the court of inquiry in which such contest shall be tried.

Contested elec-  
tions

SEC. 7. All contested elections, in the militia of this state, shall be tried by a board of officers to be appointed for that purpose, by the officer ordering the same, under the rules and regulations following, to wit: the commander in chief shall appoint the board of officers to decide the contested elections of major generals; major generals shall appoint the board to decide the contested elections of brigadier generals; brigadier generals shall ap-

point the board to decide the contested elections of colonels, lieutenant colonels, and majors: and the commanders of regiments and odd battalions, for the time being, shall appoint the board to decide the contested elections of captains and subaltern officers: *Provided*, that in all cases the members composing such board of officers as aforesaid, shall be as near the rank, as may be, of the officer whose election shall be contested, and shall consist of not less than three, nor more than seven members.

SEC. 8. The officer appointing the board of officers as aforesaid, shall notify each member thereof in writing, of the time when, and place where such board is to be held; and if any officer, when so appointed and notified as aforesaid, shall neglect or refuse to attend at the time and place of holding such board, he shall be liable to be fined as in other cases for neglect of duty.

SEC. 9. The division inspector, shall attend all boards of officers, which may be organized to pass upon the contested elections of major-generals, and shall keep a record of the proceedings of such boards respectively. The brigade inspector shall attend all boards which may be organized to pass upon the contested elections of brigadier generals; and shall keep a record of the proceedings of such boards respectively. And the adjutant of the regiment (or odd battalion, as the case may be,) shall attend all boards which may be organized, to pass upon the contested elections of colonels, lieutenant-colonels, majors, captains, and subaltern officers; and shall keep a record of the proceedings in each case respectively; and the decisions of all such boards of officers, which may at any time be instituted as aforesaid, shall be final and conclusive upon all the parties concerned.

SEC. 10. Whenever any election shall be contested as aforesaid, it shall not be lawful for the officer, whose duty it may be to certify the same, to make return thereof, until a decision shall be had thereon as aforesaid; after which the presiding officer of the board, shall certify to the officer who may have appointed the same, which of the contending parties is entitled to the office; and such successful party shall then be commissioned as in other cases: *Provided*, that no exception shall be allowed to be taken to the election of any officer, unless the same be done within twenty days after such election shall have been held.

SEC. 11. The presiding officer of any board, which may at any time be appointed to pass upon a contested election as aforesaid, shall have power at the request of either party to send for and examine witnesses; and if any

witness, when properly summoned, shall refuse or neglect to attend any such board as aforesaid, without a reasonable excuse, it shall be the duty of the presiding officer as aforesaid, to turn such witness over as a delinquent to the next regular court of inquiry, to be held for the county wherein such witness shall reside; who shall thereupon proceed to acquit or to assess the fine of such witness, as circumstances shall require, in like manner as is prescribed against delinquent militia men for failing to attend muster when legally required so to do.

Vacancies,  
how filled

SEC. 12. In all cases of vacancy, in any of the militia offices in this state, (staff officers excepted,) whether by death, resignation or otherwise, elections to fill such vacancies, shall be ordered as follows, to-wit: All elections for major generals shall be ordered by the governor or commander in chief; elections for brigadier generals, by the major generals, within their respective divisions; elections for colonels and majors of odd battalions, by the brigadier generals within their respective brigades; and the elections of all other regimental and battalion officers, by the colonels and majors commanding odd battalions, within the bounds of their commands respectively; and in all cases where any such election shall be ordered as aforesaid, a corresponding notice shall be given, and the like returns thereof shall be made, as is herein before directed, and as is required by the eleventh section of the act to which this is an addition, in cases where elections are directed to be held to fill vacancies, occasioned by resignations: *Provided*, that in all cases where there shall be no commissioned or non-commissioned officer in the company in which an election for company officers is directed to be held as aforesaid, the commanding officer of the regiment or odd battalion, (as the case may be,) shall have power to order any private militia man, belonging to such company to give ten day's notice of the time and place of holding such election; and the election shall thereupon be conducted in all respects as in other cases.

Officers enti-  
tled to a certi-  
ficate of election

SEC. 13. Whenever any militia officer shall be declared to be duly elected, he shall be entitled to receive a certificate from the officer ordering such election, which shall authorize him to command as such, until his commission can be procured. And in all such cases the officer granting such certificate, or some justice of the peace, shall administer to such officer the necessary oaths of office, and endorse the same on such certificate.

Oaths of office

SEC. 14. All oaths of office to be taken by the militia officers in this state, shall (as near as may be,) be in the following form to-wit: I do solemnly swear, or affirm, that I

will support the constitution of the United States and of this state, that I have not been engaged in a duel by sending or accepting a challenge to fight a duel, or by fighting a duel, or in any other manner in violation of the act entitled "An act to suppress duelling," since the passage of said act; nor will I be so concerned directly or indirectly, during my continuance in office; and that I will faithfully discharge the duties of captain in the regiment of Illinois militia, (or otherwise, as the case may be) to the best of my skill and understanding, so help me God."— Which said oath shall be endorsed on the commission or certificate, (as the case may be,) and certified by the officer administering the same.

SEC. 15. In addition to the staff in the several regiments and odd battalions, in this state, as at present organized, there shall be appointed by the commandant of each regiment and odd battalion, a *colour bearer*, to each battalion; whose duty it shall be to take charge of the colours of the battalion, to which he may belong, and to bear the same at all regimental and battalion parades and drill musters, and on such other occasions as shall be necessary, when required so to do.

SEC. 16. Whenever any officer of the militia in this state, shall have served as such, without intermission, for the period of seven years, and shall have been completely equipped for the whole of said time, according to law, he shall ever after be exempted from the performance of military duty, except in time of war, invasion, or insurrection.

Officers serving  
seven years  
exempted from  
militia duty

SEC. 17. If the members of any militia company in this state, shall neglect or refuse to elect company officers to command such company, when legally notified of the time and place of holding an election, for such purpose, and such company shall thereby become un-officered and disorganized, it shall be the duty of the commandant of the regiment or odd battalion, (as the case may be,) to attach such company to the next nearest company in the regiment or battalion, to which the same may belong, without delay. Whereupon, the officer commanding the company to which the same may be attached, shall proceed to enrol the names of all militia men, within the bounds of such attached company, and shall require them to perform military duty in such company, in all respects, as though they had originally belonged to his command.

Company re-  
fusing to elect  
officers may be  
attached to the  
nearest compa-  
ny

SEC. 18. All volunteer, cavalry, grenadier, light infantry, and rifle companies now raised and organized, shall have until the first day of April next, to uniform and equip themselves, respectively: *Provided*, that no such

Time allowed  
for equipping

company shall hereafter be dissolved for the want of equipment, as the law directs; but in such case, each member shall be fined twenty-five cents, for each and every day he shall appear on parade without being equipped, according to law, and the regulations of the company to which he may belong.

and fine for omission

Fine of officers for not equipping

SEC. 19. In all cases where militia officers shall be fined for appearing on parade without equipments, the fine shall be proportioned according to the extent to which the uniform of such officer shall be deficient.

Resignation endorsed

SEC. 20. In all cases, hereafter, where a resignation is accepted, the cause of resignation may be either endorsed on the commission, or, if the commission be not surrendered, on the letter of resignation.

Shooting matches

SEC. 21. It shall hereafter be lawful for all militia men and others, in this state, to engage in shooting matches for beef, and other property, at militia musters, and elsewhere: *Provided*, due precaution be taken to guard against all accidents which may endanger the safety of such persons as may be present.

Fine

SEC. 22. No non-commissioned officer, musician or private, shall be fined more than twenty-five cents, for non-attendance at any company muster, if he reside more than fifteen miles from the place of holding the same; or for non-attendance at any battalion muster, if he reside more than twenty miles from the place of holding the same; or for non-attendance at any regimental or drill muster, if he reside more than twenty-five miles from the place of holding the same. This act to be in force from its passage.

[Approved, Feb. 9, 1827.]

## MILITIA.

In force Feb. 6, 1827

*AN ACT for the relief of persons having conscientious scruples against bearing arms.*

Person conscientiously scrupulous of bearing arms entitled to an exemption

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly, That every person who has conscientious scruples against bearing arms, or being engaged in military operations, shall be exempt from performing militia duty in time of peace, on condition that he will perform three days' labor, annually, in addition to the labor required of him by the general road law, on the public highways, in the road district in which he resides, under the direction of the supervisor of such district.*

SEC. 2. Every person claiming relief under this act, shall make an acknowledgment in writing before some judge or justice of the peace of the county in which such person resides, that he in sincerity and truth has conscientious scruples against bearing arms, or being engaged in military operations, and the same being signed by the person, and certified by the judge or justice, shall be presented by the person claiming relief under this act, to the supervisor of the road district in which he resides, who shall enter the name of such conscientious person, on a list, to be kept by him, of the names of persons in his district who are conscientiously scrupulous of bearing arms, and the supervisor shall certify on the back of such acknowledgment and certificate so presented to him, that the name of the person presenting the same, has been entered on the list aforesaid. And the commanding officer of the company in which such conscientious person may be enrolled, on being presented with the acknowledgment and certificate, aforesaid, shall cause the name of such conscientious person to be erased from the roll.

Mode of avail-  
ing themselves  
of the benefit of  
this act

[Approved, Feb. 6, 1827.]

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## MILLS AND MILLERS.

### *AN ACT regulating Mills and Millers.*

In force June  
1st, 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That when any person owning lands on one side of any stream or water course, the bed of which wholly or in part belongs to himself or herself, and may be desirous of building a water grist mill, or saw mill, on such lands, or to erect any dam across such water course, for that purpose, and shall not own the lands on the opposite side of such stream, or water course, such person, on application to the county commissioners' court of the county where the opposite lands may lie, may obtain a writ of *ad quod damnum*, to be issued, directed and proceeded on as is hereinafter directed: *Provided*, that notice in writing of such application, be given four weeks before the said application, by personal service on the owner or owners of such lands, his, her or their agents, if to be found in the county, and if not, then by affixing such notice on the court house door of the county.

When and how  
a writ of ad  
quod damnum  
may issue

Notice of appli-  
cation for such  
writ

SEC. 2. The said writ shall be directed to the sheriff of the county in which the lands to be affected thereby may lie, commanding him to summon twelve good and lawful

How such writ  
shall be direct-  
ed and served

men of his county, to meet upon the lands in such writ named, on a day therein to be specified; and ten days notice of the execution of such writ, shall be given by the sheriff, to the proprietors of such lands, as before directed in the case of notices, unless the party, his, her or their agent, were present, in court when such writ was obtained.

Jury

SEC. 3. The jury so summoned, when met, shall be sworn and charged by the sheriff, impartially, and to the best of their skill and judgment to view the lands in the said writ described, and the lands above and below the proposed dam, and ascertain the damages, as by said writ directed, and shall locate and set apart, by metes and bounds, so much land as they shall think necessary for the purpose of erecting such dam, not exceeding three acres, having due regard in such location, to the interest of both parties, and shall appraise the same at its true value; also to examine the lands of other persons, which may probably be overflowed by the erection of such dam, and say what damage each owner will sustain thereby, and whether the dwelling house, out house, orchard, or garden, of any such owner will be overflowed; and whether, in their opinion, the health of the neighborhood will be injuriously affected by such overflowing; which inquisition shall be made and signed by all the jurors, and returned, by the sheriff, with the writ, to the next term of the court, whence it issued.

Inquisition and return thereof

Notice to the owner of the land

Substance of the writ

Leave to build a mill dam to overflow any dwelling house &amp;c. not to be given

SEC. 4. When the inquest aforesaid shall be taken, the party obtaining the same shall notify the owner or owners of lands, mentioned in such inquisition, whose lands are to be affected by the same, to appear at the next county commissioners' court, and shew cause why leave should not be granted to build such mill and dam; which notice shall be served as before directed.

SEC. 5. Any person wishing to build such mill, and to dam any water course, who may own the land on both sides of such stream, shall make application as aforesaid to the court of the county where such mill is proposed to be erected, for a writ to examine, as aforesaid, what lands may be thereby overflowed, and what damage will be sustained by the owner or owners of such lands; and whether the health of the neighborhood will be affected by such overflowing; which writ shall be issued, directed, and returned, as before prescribed.

SEC. 6. If on such inquest, or other evidence, it shall appear to the court that the dwelling house of any proprietor, or any out house, garden, or orchard will be overflowed, or the health of the neighborhood impaired, they

shall not give leave to erect such dam; otherwise, if the said court shall judge it reasonable, and for public benefit, they may give leave, and may lay the party applying, under such regulations and restrictions, in respect to the navigation of such stream, as they shall judge proper.

SEC. 7. If the party applying, obtain leave to build the said dam, he shall, on paying to the proprietor or proprietors of the lands located, and the damages assessed by the jury as aforesaid, become seized, in fee, of the land so located, to him, his heirs and assigns. But if he shall not, within one year thereafter, begin to build the said mill, and finish the same within three years, and afterwards keep it in good repair for the accommodation of the public; or in case the said mill or dam be destroyed, shall not begin to rebuild in one year after such destruction, and finish it in three years, the said land shall revert to the former owner, and his heirs; unless at the time of such destruction the owner of such mill be an infant, or otherwise disabled in law; in which case, the same term shall be allowed after such disability is removed.

Damages assessed, to be paid

Mill to be completed within 3 years, else the land will revert to original owner

SEC. 8. The inquest of the jury aforesaid, or the opinion of the court shall not bar any prosecution or action, which would otherwise be maintained in law, had this act never been passed, other than for such injuries, as were foreseen and estimated by the jury.

SEC. 9. Any person having obtained leave to erect any dam and mill as aforesaid, who shall neglect to finish the same, within the term before prescribed in this act, or having erected such mill, shall fail to keep it in repair, and running for the accommodation of the public, for the space of one year, at any one time, shall forfeit all rights acquired by virtue of this act, or any act of this state.

Inquest, &c. no bar to a prosecution

Forfeitures of the benefits of this act how incurred

SEC. 10. All mills now in operation, or which may hereafter be put in operation, in this state, for grinding wheat, rye, corn, or other grain, and which shall grind for toll, shall be deemed public mills.

What are public mills

SEC. 11. The owner or occupier of every public mill within this state, shall grind the grain brought to his mill, as well as the nature and condition of his mill will permit, and in due turn as the same shall be brought, and may take for the toll, if a water mill or steam mill, for grinding and bolting wheat or rye, one eighth part: for grinding indian corn, oats, barley, and buckwheat, not required to be bolted, one seventh part: for grinding malt, and chopping all kinds of grain, one eighth part: For an ox or a horse mill, for grinding and bolting wheat or rye into flour, one fourth part: for grinding all other grain, one fourth part, in full of all compensation: *Provided*, if the

Duty of millers

Their toll

owner of any such grain, ground at an ox or horse mill, shall furnish team to grind the same, with the consent of the owner or occupier of such mill, the same toll shall be taken, as is allowed for a water or steam mill, and no more.

Further duty of millers

SEC. 12. It shall be the duty of each and every owner and occupier of every public mill, to give due and punctual attendance, when his mill shall not be out of repair, and to aid and assist in loading and unloading all grain which shall be brought to him to be ground. And he shall keep in his mill an accurate half bushel measure, and an accurate set of toll dishes. And for a failure to perform any of the duties required by this act, every occupier of a public mill, shall forfeit and pay the sum of five dollars, to the use of any person who will sue for the same, in any court having cognizance thereof.

Penalty for failure

ure

Responsibility of millers

SEC. 13. Every owner or occupier of a public mill, as aforesaid, shall be accountable for the safe keeping of all grain, received in his mill for the purpose of being ground, with the bags or casks containing the same; and shall, when required, deliver the same, or the flour or meal thereof, to the owner, or his or her agent or servant, with the bags or casks in which the same was received: *Provided*, that such miller shall not be accountable for any bags or casks, unless the same be distinctly marked with the initial letters of the owner's name; nor for the loss of grain, bags, or casks, which may happen by unavoidable accident.

Penalty for taking too much toll

SEC. 14. If any miller, or the occupier of any mill, shall take a greater proportionate quantity of toll than is allowed by this act, or shall not sufficiently grind, or grind and bolt, (as the case may be,) agreeably to the capacity of his mill, and in due turn, as the same may have been brought, all grain received into such mill for the purpose of being ground, or ground and bolted, as directed by the owner, every miller of a public mill, so offending, shall forfeit and pay the sum of five dollars, to the party injured; to be sued for and recovered as before provided for.

Act repealed

SEC. 15. The "act regulating grist mills and millers," approved March 25, 1819, is hereby repealed; but no right acquired, or liability incurred, under said act, shall be affected by such repeal. This act to take effect and be in force, from and after the first day of June next.

[Approved Feb. 9, 1827.]

*AN ACT concerning Minors, Orphans and Guardians.*In force June 1  
1827

SEC. 1. *Be it enacted by the People of the State of Illinois,*  
*represented in the General Assembly,* That the courts of probate, in their respective counties, shall admit orphan minors above the age of fourteen years, the father being dead, to make choice of guardians, and appoint guardians for such as are under the age of fourteen years, in all cases where such minor shall be possessed of, or entitled to real or personal estate.

Orphan minors  
may choose  
guardians

SEC. 2. Whenever it shall be represented to said court, that any orphan minor, above the age of fourteen years, has not a guardian, it shall be the duty of said court to issue a notification to such minor, to appear before the said court, at a time therein specified, and choose a guardian; and if such minor shall neglect or refuse to appear, or on appearing, shall neglect to choose a guardian, the said court shall appoint one for such minor, as if said minor were under the age of fourteen years.

Judge of pro-  
bate may notify  
minor to appear

SEC. 3. Where a minor having a father living shall be entitled to, or possessed of, any estate, real or personal, not derived from his or her father, the said court of probate, shall notify the father to appear and shew cause, why a guardian for such minor should not be appointed; if sufficient reasons be not shewn, may appoint the father, if he be a proper person, if not, then such other person as the minor, if of the age of fourteen years, may choose; if such minor shall refuse or neglect, or be not of sufficient age to choose a guardian, the court shall appoint some fit person to be guardian for such minor. And when any person is appointed guardian, other than the father, he shall have the charge and management of the estate, but no control over the person of the minor.

Father may be  
appointed  
guardian

SEC. 4. If the father of a minor be insane, or incapable from want of understanding, to take care of, and provide for such minor, the court of probate shall appoint a guardian as though such father were dead; such insanity or incapacity to be ascertained, by inquest in the circuit court, as in other cases.

SEC. 5. Guardians by virtue of their office as such, shall be allowed in all cases, to prosecute and defend for their ward.

SEC. 6. The court of probate shall take, of each guardian appointed under this act, bond with good security, in a sum double the amount of the minor's estate, real and personal, conditioned as follows: "the condition of this obligation is such that if the above bound A. B. who has been appointed guardian for C. D. shall faithfully discharge

Bond to be ex-  
ecuted by guardian

## MINORS, ORPHANS AND GUARDIANS.

the office and trust of such guardian according to law; and shall render a fair and just account of his said guardianship to the court of probate for the county of

from time to time, as he shall be thereto required by said court, and comply with all the orders of said court lawfully made, relative to the goods, chattels and moneys of such minor, and render and pay to such minor all moneys, goods and chattels, title papers and effects, which may come to the hands or possession of such guardian, belonging to such minor, when such minor shall be thereto entitled, or to any subsequent guardian, should such court so direct; then this obligation shall be void, or otherwise to remain in full force and virtue;” which bond shall be taken to the people of the state of Illinois, for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time, against all or any one or more of the obligors, in the name, and to the use and benefit of any person entitled, by a breach thereof, until the whole penalty shall be recovered thereon.

Judge of probate may call guardian to account

SEC. 7. Courts of probate shall have power in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors from time to time, to render their respective accounts upon oath, touching their guardianship to said courts, for adjustment, and shall have power to compel such guardian to give supplementary security, whenever it shall judge proper, and in default thereof, to remove such guardian.

Power to remove guardian

SEC. 8. The court of probate in all cases shall have power to remove guardians for good and sufficient reasons, which shall be entered on record, and to appoint others in their place, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed in this act; and where any guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian, so removed, or the executors or administrators of a deceased guardian, to deliver up to such successor, all goods, chattels, moneys, title papers or other effects, belonging to such minor, which may be in the possession of such guardian, so removed, or of the executors or administrators of a deceased guardian, or of any other person or persons who may have the same, and upon failure, to commit the party offending to prison, until he, she or they comply with the order of the court.

Power of guardian

SEC. 9. Guardians shall have power to demand, sue for, and receive all moneys belonging to their wards from executors and administrators, as soon as the same may be collected; or of any other person or persons in whose hands or

possession the same may be; and it shall moreover be their duty to put to interest the moneys of their wards upon mortgage security, to be approved of by the court; which letting shall always be for one year, and at the end of each year the interest shall be added to, and made part of the principal; and said guardians shall also have power to lease the real estate of the ward, upon such terms, and for such length of time, as the court of probate shall direct: *Provided*, such leasing shall never be for a longer time than during the minority of the ward; and the minority of females shall cease at the age of eighteen years.

SEC. 10. The guardian shall have power under the direction of the court of probate to superintend the education and nurture of the ward, and for that purpose may pay out such portions of the ward's money as the court of probate shall from time to time, by order direct: *Provided*, that the rents and profits arising from his real estate, and next the interest on the ward's money, shall always be first resorted to, for the education and nurture of the ward.

Superintend  
the education  
of his ward

SEC. 11. The circuit court may for just and reasonable cause, being satisfied that the guardian has faithfully applied all the personal estate, order the sale of the real estate of the ward, on the application of the guardian by petition in writing, stating the facts, and having given notice to all persons concerned, of such intended application, in some public newspaper printed in this state, or by setting up written notices, in three of the most public places in the county, at least three weeks before the sitting of the court. Sale of real es-  
tate

Such order may enable the guardians to sell and convey the real estate for the support and education of the ward, or to invest the proceeds in other real estate. The court in such order shall direct the time and place of sale, the notice thereof to be given, and may direct the sale to be made on reasonable credit; and require such security of the guardian and purchaser as the interest of the ward may require. It shall be the duty of the guardian making such sale, as soon as may be, to make return of such proceedings to the court granting the order, which if approved by the court shall be recorded, and shall vest in the purchaser or purchasers, all the interest the ward had in the estate so sold; application for the sale of such real estate shall be made in the county, where the ward shall reside, although the estate may lie in a different county; but if the ward do not reside in this state, such application shall be made to the court of the county where the whole or a part of the estate shall be situated.

**SEC. 12.** An account of all moneys received by any guardian, for the sale of real estate of any minor as aforesaid, shall be returned on oath by such guardian to the court of probate of the county, where letters of guardianship were obtained, and such moneys shall be accounted for, and shall be subject to the order of the court of probate in like manner as other moneys belonging to such minor.

**SEC. 13.** Appeals shall be allowed in all cases from the order or judgment of the court of probate to the circuit court, in the same manner as is provided by an act relative to wills and testaments, executors and administrators, and the settlement of intestate's estates.

**SEC. 14.** Guardians on final settlement, shall be allowed such fees and compensations for their services, as shall seem reasonable and just to the judge of probate, not exceeding what are, or shall be allowed by law, to administrators.

**SEC. 15.** All laws and parts of laws heretofore enacted on the subject of appointing guardians to minors, and for the management of their estates, and every thing relating thereto, are hereby repealed; but no right acquired or proceedings had, or which may be acquired or had before this act takes effect, under those laws shall be impaired, or set aside, in consequence of the passage of this act, and all settlements in those cases shall be made agreeably to the requisitions and provisions of the same. This act to take effect and be in force on the first day of June next.

[Approved, Feb. 5, 1827.]

Appeals from  
judge of probate

Compensation of guardian

Laws repealed

## NE EXEAT AND INJUNCTIONS.

### *AN ACT regulating the issuing of Writs of Ne Exeat and Injunctions.*

In force June 1  
1827

When ne exeat  
may be granted

**SEC. 1.** Be it enacted by the People of the State of Illinois represented in the General Assembly, That writs of *ne exeat res publica*, may hereafter be granted, as well in cases where the debt or demand is not actually due, but exists fairly and *bona fide* in expectancy at the time of making application, as in cases where the demand is due; and it shall not be necessary to authorize the granting of such writ of *ne exeat*, that the applicant should shew that his debt or demand is purely of an equitable character, and only cognizable before a court of equity.

**SEC. 2.** In case of joint, or joint and several obligors or

debtors, if one or more of them be about to remove without the jurisdictional limits of this state, taking their property with them, leaving one or more co-obligors or debtors bound with them for the payment of any sum of money, or for the delivery of any article of property, or for the conveyance of land at a certain time, which time shall not have arrived, at the time of such intended removal, such co-obligor or debtor who remains, shall be entitled on application to a writ of *ne exeat*, to compel the co-obligor or co-debtor, who is about to remove, to secure the payment of his part of the sum to be paid, or of the delivery of the property, or to convey or to join in the conveyance of the land. Also in cases of security, the writ of *ne exeat* may issue on application of a security, against the principal or co-security, when the obligation or debt shall not be yet due, and the principal or co-security is about removing out of the state.

SEC. 3. No writ of *ne exeat* shall be granted, but upon Bill or petition filed, and affidavit to the truth of the allegations therein contained; upon the granting of any such writ, the court or judge granting the same, shall endorse, or cause to be endorsed, on the bill or petition, in what penalty, bond and security shall be required of the defendant; and shall also, before issuing the said writ, take bond of the complainant, with good and sufficient security, in such sum as the said court or judge shall deem proper, conditioned, that the said complainant will prosecute his bill or petition with effect; and that he will reimburse to the defendant, such damages and costs as he shall wrongfully sustain by occasion of the said writ. If any defendant to such writ of *ne exeat* shall think himself aggrieved, he may bring suit on such bond; and if on trial, it shall appear that such writ of *ne exeat* was prayed for without a just cause, the person injured shall recover damages, to be assessed as in other cases on penal bonds.

SEC. 4. All writs of *ne exeat*, shall be returnable into the circuit court of the proper county; and when granted by a judge in vacation, may be issued under the hand of the judge; or the judge may direct the clerk of the said circuit court to issue the said writ, and to take bond of the complainant as is above required.

SEC. 5. The writ of *ne exeat* shall contain a summons for the defendant to appear in the circuit court and answer to the said petition or bill, and upon the same being served upon the said defendant, he shall give bond with security, in the sum endorsed on such writ, conditioned that he will not depart the state without leave of the said court, and that he will render himself in execution to answer any

The writ what  
to contain

judgment or decree, which the said court may render against him; and in default of giving such security, he may be committed to jail as in other cases, for the want of bail; no temporary departure of the defendant from the state shall be considered as a breach of the condition of the said bond, if he shall return before personal appearance shall be necessary to answer or perform any judgment, order, or decree of the said court.

Surety may  
surrender de-  
fendant

SEC. 6. The surety in any bond for the defendant as aforesaid, may at any time before the said bond shall be forfeited, surrender the said defendant in exoneration of himself in the same manner that bail may surrender their principal, and obtain the same discharge.

SEC. 7. On the return of the writ of *ne exeat*, if the same shall have been duly served, the court shall proceed therein as in other cases in chancery, if the matters alleged in said bill be purely of an equitable character; and the time of performance of the duty or obligation of the defendant has expired, if not, then the proceedings shall be stayed until it has expired; but the court may nevertheless proceed to determine whether the said writ ought not to be quashed or set aside.

SEC. 8. The supreme and circuit courts in term time, and any judge thereof, in vacation, shall have power to grant writs of *ne exeat* and injunctions. No writ of injunction shall be granted to stay proceedings under a judgment obtained before a justice of the peace for a sum not exceeding twenty dollars, besides the costs.

Injunctions, &c SEC. 9. When an injunction shall be granted by the supreme court or a judge thereof, it shall be made returnable into the circuit court of the proper county.

Proceedings on  
injunctions

SEC. 10. Where an injunction shall be granted to stay a suit or judgment at law, the proceedings shall be had in the county where the judgment was obtained, or the suit is pending; and the writ of subpeena may be sent in the first instance into any county within this state where the defendant resides.

Not granted, &c

SEC. 11. No injunction shall be granted to stay any judgment at law, for a greater sum than the complainant shall shew himself equitable not bound to pay, and so much as shall be sufficient to cover costs; every injunction when granted, shall operate as a release of all errors in the proceedings at law, that are prayed to be enjoyed. No injunction shall be issued unless the complainant shall have previously executed a bond with sufficient surety to the defendant, approved by the court or judge granting such injunction, and filed with the clerk in double the sum directed to be enjoined, conditioned for the payment of all

money and costs due, or to be due, to the plaintiff in the action at law; and also all such costs and damages as shall be awarded against the complainant, in case the injunction shall be dissolved, or such bond may be entered into before the clerk of the circuit court of the county, where the writ is required to be issued, the court or judge granting the injunction, having first approved the security. If the injunction be dissolved in the whole or in part, the complainant shall pay, exclusive of legal interest and costs, such damages as the court shall award, not exceeding ten per centum, on such part as may be released from the injunction; and the clerk shall issue execution for the same, when he issues execution upon such judgment.

SEC. 12. If any person against whom a writ of injunction shall be issued, shall after the service thereof be guilty of disobedience to, and breach of the said injunction, it shall be lawful for the judge granting the same; or if the same were granted in open court; then for any judge of that court in vacation to issue an attachment against the said person for a contempt, upon his being brought before the said judge, unless he shall disprove or purge the said contempt, the said judge may in his discretion, commit him to jail, until the sitting of the court, in which the said injunction is pending, or take bail for his appearance in the said court at the next term thereof, to answer for the said contempt, and to abide the order of the court thereon.

SEC. 13. Upon the filing of an answer, it shall be in order at any time in term, to move for the dissolution of the injunction; and upon such motion it shall be lawful for the parties to introduce testimony to support the bill and answer: the court shall decide such motion upon the weight of testimony, without being bound to take the answer as absolutely true. If, after such dissolution is moved for, the plaintiff in the bill, will satisfy the court by his own affidavit or the affidavit of any disinterested person, that the answer, or any material part thereto, (to be specified in such affidavit) is untrue, and that he has witnesses whose testimony he believes he can procure by the next term of the court, who will disprove the said answer, or such material part thereof as shall be specified as aforesaid, and that he has had no opportunity to procure such testimony, since the coming in of the answer, it shall be lawful for the court to grant a continuance of the said motion, until the next term. The testimony to be heard on such motions, aside from the bill and answer shall be, by depositions in writing, taken as in other cases in chancery proceedings, except the affidavits which may have been

## OATHS AND AFFIRMATIONS.

filed with the bill or answer, which may be read on such motion as heretofore; and the depositions taken to dissolve an injunction, may be read on the final hearing of the cause in which they have been taken.

Acts repealed

SEC. 14. All acts and parts of acts coming within the intent, spirit and meaning of this act, and the objects and proceedings to which it relates and heretofore in force in this state, are hereby repealed. No proceedings, however, had, or rights secured under them, shall be in any way impeded or impaired, but may be prosecuted and enforced, as if this act had not taken effect. This act to take effect on the first day of June next.

[Approved, Jan. 22, 1827.]

## OATHS AND AFFIRMATIONS.

In force Dec.  
26, 1826

## AN ACT concerning Oaths and Affirmations.

Conscientious  
persons may  
swear without  
kissing book

SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That whenever any person shall be required to take an oath before he enters upon the discharge of any office, place, or business, or on any other lawful occasion, and such person shall declare that he or she has conscientious scruples about the present mode of administering oaths, by laying the hand on, and kissing the gospels; it shall be lawful for any person empowered to administer the oath, to administer it in the following form, to wit: the person swearing shall, with his or her hand uplifted, *swear by the ever living God*; and shall not be compelled to lay the hand on, or kiss the Gospels. And oaths so administered, shall be equally effectual, and subject such persons to the like pains and penalties for wilful and corrupt perjury, as oaths administered in the usual form.

Manner of it

Subject to the  
same penalties  
as in other cases

Such persons

may affirm

Penalty for  
corruptly af-  
firming, &c.

SEC. 2. Whenever any person required to take or subscribe an oath as aforesaid, and in all cases where an oath is upon any lawful occasion to be administered, and such person shall have conscientious scruples against taking an oath, he or she shall be admitted instead of taking an oath, to make his or her solemn affirmation, or declaration in the following form, to wit: "*You do solemnly, sincerely, and truly, declare and affirm;*" which solemn affirmation, or declaration shall be equally valid, as if such person had taken an oath in the usual form; and every person guilty of falsely and corruptly declaring as aforesaid, shall incur and suffer the like pains and penalties as are or shall

be inflicted on persons convicted of wilful and corrupt perjury.

Sec. 3. All courts now established, or hereafter to be established, and each judge, justice, and clerk thereof, and all justices of the peace, shall, respectively, have power to administer oaths and affirmations to witnesses and others, concerning any thing depending, or proceeding commenced, or to be commenced, before them, respectively; and the said courts, the judges, justices and clerks thereof, within their respective districts, circuits, or counties, and the justices of the peace within their counties, shall respectively have power to administer all oaths of office, and other oaths required to be taken by any person before entering upon the discharge of the duties of any office, appointment, place or business, or any other lawful occasion, and to take affidavits and depositions concerning any matter or thing, process or proceedings, depending or to be commenced, in any court, or before any justice of the peace, or on any occasion wherein such affidavits or depositions are authorized or required by law to be taken. And all oaths, affirmations, affidavits and depositions, so administered or taken, shall subject any person who shall so swear or affirm, wilfully and falsely, in any matter material to any issue or point in question, to the like pains and penalties inflicted by law, for the time being, on persons convicted of wilful and corrupt perjury.

Who may administer oaths,  
&c.

and upon what occasions

Penalty for  
false swearing

[Approved, Dec. 26, 1826.]

## POOR.

### *AN ACT for the maintenance of the Poor.*

In force May  
1, 1827

Sec. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the county commissioners of the several counties in this state, shall be, and they are hereby vested with entire and exclusive superintendence of the poor, in their respective counties.

County com'rs.  
to have super-  
intendence of  
poor

Sec. 2. Every poor person who shall be unable to earn a livelihood, in consequence of any bodily infirmity, or other unavoidable cause, shall be supported by the father, grand father, mother, grand mother, and children, of such pauper, if they or either of them be of sufficient ability: and every person who shall fail or refuse to maintain his or her father, grand father, mother, grand mother, or child, when directed by the county commissioners' court.

What relatives  
shall support  
each other

of the proper county, so to do, shall forfeit and pay, to the said county commissioners, for the use of the poor of their county, the sum of five dollars for every month for which they or either of them shall so fail or refuse, to be recovered in the name of the county commissioners, for the use of the county, before any justice of the peace.

Poor having no  
relations, &c.  
how supported.

SEC. 3. When any person shall be incapable of earning a livelihood, as aforesaid, and shall not have any such relatives as are named in the preceding section, or such relatives shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as his or her case may require, out of the county treasury: and the county commissioners may either make contracts for the necessary maintenance of the poor, or appoint such agents as they may deem necessary, to oversee and provide for the same.

Minors how  
provided for

SEC. 4. When any minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because the parents or other relatives of such minor are unable or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice to some respectable freeholder of the county, by written indenture, which shall bind such minor to serve as an apprentice, until the age of twenty-one years, if a male, and the age of eighteen, if a female; and shall bind the person receiving the services of such apprentice, to furnish said apprentice with comfortable board, lodging, washing, and clothing, and with so much schooling, and compensation, as shall be deemed right.

Acts repealed

SEC. 5. An act entitled "an act for the relief of the poor," approved March 5, 1819, is hereby repealed. This act to be in force from and after the first day of May next: *Provided*, that no rights that have accrued under the law hereby repealed, or penalties incurred, shall be affected by the passage of this act, but the same shall be prosecuted according to the provisions of the act hereby repealed.

*Approved Feb. 2, 1827.*

In force June  
1, 1827

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly, That the first process in all*

actions to be hereafter commenced in any of the circuit courts of this state shall be a summons, except actions where special bail may be required: which summons shall be issued under the seal of the court tested in the name of the presiding judge, dated on the day it shall be issued, and signed with the name of the clerk; and shall be directed to the sheriff (or if he be interested in the suit) to the coroner of the county in which the defendant or defendants, or some or one of them reside, or may be found; and shall be made returnable on the first day of the next circuit court in which the action may be commenced.

SEC. 2. It shall be the duty of the sheriff, or coroner, to serve all process of summons, or capias, when it shall be practicable, ten days before the return day thereof, and to make return of such process to the clerk who issued the same, by or on the return day, with an endorsement of his service, the time of serving it, and the amount of his fees: *Provided*, that when such process shall have been directed to a foreign county, the officer executing the same, may make return thereof by mail; and the clerk may charge the postage, and tax the amount in his fee bill.

SEC. 3. If it shall not be in the power of such sheriff or coroner to serve such summons or capias, ten days before the return day thereof, he may execute the same at any time before or on the return day, but in such case the defendant or defendants shall be entitled to a continuance, and shall not be compelled to plead before the next succeeding term.

SEC. 4. Whenever it shall appear, by the return of the sheriff or coroner, that the defendant or defendants are not found, the clerk shall, at the request of the plaintiff, issue another summons, or capias, (as the case may be,) and so on until service be had, and the defendant or defendants be summoned, or brought into court, and if such summons or capias be served on any one or more, but not on all of the defendants, the plaintiff or plaintiffs shall be at liberty to proceed to trial and judgment, in the same manner as if all the defendants were in court: and any judgment so obtained shall be valid against the defendant or defendants on whom the process had been served, and the plaintiff or plaintiffs may, at any time afterwards, have a summons in the nature of a *scire facias* against the defendant or defendants, not served with the first process as aforesaid, to cause him, her, or them, to appear in the said court, and shew cause why he, she, or they, should not be made party to such judgment, and the court shall

First process to  
be a summons

how issued

to whom di-  
rected

when returna-  
ble

When to be  
served

and how re-  
turned

Proviso

Alias summons  
when to issue

Service on one  
of the def'ts  
effect of

Scire facias a-  
gainst def't's not  
served

proceeding  
thereon

thereupon proceed to hear and determine the matter, in the same manner as if such defendant or defendants had been originally summoned or brought into court; and such defendant or defendants shall also be allowed the benefit of any payment which may have been made on the judgment before recovered, and the judgment of the court against the defendant or defendants in such case, shall be that the plaintiff or plaintiffs recover against such defendant or defendants, together with the defendant or defendants in the former judgment, the amount of his debt or damages, as the case may be.

Judgment

Officer not re-  
turning process  
rule may be  
made

SEC. 5. If any sheriff or coroner to whom any summons or capias shall be delivered, shall neglect or refuse to make return of the same, before or on the return day of such process, the plaintiff may enter a rule requiring said sheriff or coroner to make return of such process on a day to be fixed by the court, or to shew cause on that day, why he should not be attached, for a contempt of the court; and the plaintiff shall thereupon cause a written notice of such rule to be served on such sheriff or coroner, and if good and sufficient cause be not shewn to excuse such officer, the court shall adjudge him guilty of a contempt; and shall proceed to punish such officer as in other cases of contempt.

proceedings  
thereon

Declaration  
when to be filed

SEC. 6. If the plaintiff shall not file his declaration, together with a copy of the instrument of writing or account on which the action is brought, in case the same be brought on a written instrument, or account, ten days before the court at which the summons or capias is made returnable, the court, on motion of the defendant, shall continue the cause at the cost of the plaintiff, unless it shall appear that the suit was commenced within ten days of the sitting of the court, in which case the cause shall be continued without costs, unless the parties shall agree to have a trial, and if no declaration shall be filed ten days before the second term of the court, the defendant shall be entitled to a judgment, as in case of a non-suit.

Docket, how  
kept

SEC. 7. The clerks of the circuit courts shall keep a docket of all the causes pending in their respective courts, in which shall be entered the names of the parties, the cause of action, and the name of the plaintiff's attorney; and he shall furnish the judge and bar at each term, with a copy of the same, in which all indictments and causes to which the people may be a party, shall be first set down, after which shall be set down all cases in law, in order, according to the date of their commencement; and lastly the suits in chancery: and the clerk shall also set and apportion the causes for as many

days of the term as he may think necessary, or be directed by the judge; and all subpœnas for witnesses shall be made returnable, on the day on which the cause in which the witnesses are to be called, is set for trial.

SEC. 8. The clerks shall, from time to time issue subpœnas for such witnesses as may be required by either party, returnable on the day for which the cause in which they are required to attend, is set for trial, and every clerk who shall refuse so to do, shall be fined, at the discretion of the court, in any sum not exceeding one hundred dollars.

SEC. 9. In all cases pending in any circuit court of this state, if both the parties shall agree, both matters of law and fact may be tried by the court.

SEC. 10. The several circuit courts shall have power, in any action pending before them, upon motion, and good and sufficient cause shewn and reasonable notice thereof given, to require the parties or either of them, to produce books or writings in their possession or power, which contain evidence pertinent to the issue; and it shall be the duty of the defendant or defendants, in all cases where he, she or they intend to prove, on the trial, any accounts or demands against the plaintiff or plaintiffs, to file with his plea a bill of the particular items of such accounts or demands, and no other accounts or demands shall be suffered to be proved to the jury.

SEC. 11. On the appearance of the defendant or defendants, the court may allow such time to plead, as may be deemed reasonable and necessary, and for want of appearance, may give judgment by default on calling the cause, except in cases where the process has not been served or declaration filed, ten days before the term of the court, but all the causes shall be tried, or otherwise disposed of in the order they are placed on the docket, unless the court, for good and sufficient cause, shall otherwise direct. And whenever either party shall apply for the continuance of a cause on account of the absence of testimony, the motion shall be grounded on the affidavit of the party so applying, or his, her or their authorized agent, shewing that due diligence has been used to obtain such testimony, or the want of time to obtain it; and also the name and residence of the witness or witnesses, and what particular fact or facts the party expects to prove by such witness or witnesses; and should the court be satisfied that such evidence would not be material on the trial of the cause, or if the opposite party will admit the fact or facts stated in the affidavit, the cause shall not be continued.

Clerks to issue subpœnas

Court may compel the production of books, &c. in evidence

On appearance courts to give time to plead

Judgment by default

Continuances when allowed

Def't may  
plead several  
pleas or the  
general issue,  
and give special  
matter in evi-  
dence

Def't not to  
deny the ex-  
ecution of any  
writing unless  
on oath

When damages  
may be as-  
sessed by the cl'r

When by a jury

Affidavits to be  
filed

Pl't may as-  
sign actions on  
penal bonds  
and breaches

**SEC. 12.** The defendant may plead as many matters of fact in several pleas as he may deem necessary for his defence, or may plead the general issue, and give notice in writing under the same, of the special matters intended to be relied on for a defence on the trial, under which notice, if adjudged by the court to be sufficiently clear and explicit, the defendant shall be permitted to give evidence of the facts therein stated, as if the same had been specially pleaded and issue taken thereon; but no person shall be permitted to deny, on trial, the execution of any instrument in writing, whether sealed or not, upon which any action may have been brought, or which shall be pleaded or set up by way of defence, or set-off, unless the person so denying the same, shall, if defendant, verify his plea by affidavit; and if plaintiff, shall file his or her affidavit denying the execution of such instrument: *Provided*, if the party making such denial be prosecuting, or sued as executor or administrator, it shall be sufficient to state in such affidavit the belief of the party making the same, according to his or her best knowledge, that such instrument was not executed by the testator or intestate.

**SEC. 13.** Whenever judgment shall be given against the defendant or defendants by default, in any action brought on any instrument of writing for the payment of money only, the court may direct the clerk to assess the damages, by computing the interest and report the same to the court, upon which final judgment shall be given; and in all other actions when judgment shall go by default, the plaintiff may have his damages assessed by the jury in court.

**SEC. 14.** The court may, in its discretion, before final judgment, set aside any default, upon good and sufficient cause, upon affidavit, upon such terms and conditions as shall be deemed reasonable.

**SEC. 15.** All affidavits read in court, during the progress of any cause, and relating thereto, shall be filed and preserved by the clerk.

**SEC. 16.** In actions brought on penal bonds, conditioned for the performance of covenants, the plaintiff may assign in his declaration as many breaches as he may think fit, and the jury, whether on trial of the issue or of inquiry shall assess the damages for so many breaches as the plaintiff shall prove, and the judgment for the penalty shall stand as a security for such other breaches as may afterwards happen and the plaintiff, may, at any time afterwards, sue out a writ of inquiry, to assess damages for the breach of any covenant or covenants contained in such bond, subsequent to the former trial or inquiry; and whenever

execution shall be issued on such judgment, the clerk shall endorse thereon the amount of the damages assessed by the jury, with the costs of suit, and the sheriff or coroner shall only collect the amount so endorsed: *Provided*, that in all cases, where a writ of inquiry of damages shall be issued for any such breaches, subsequent to the first trial or inquiry, the defendant, or his agent or attorney, shall have at least ten days notice, in writing, of the time of executing the same.

SEC. 17. The defendant or defendants in any action brought upon any contract or agreement either express or implied, having claims or demands against the plaintiff or plaintiffs in such action, may plead the same or give notice thereof under the general issue, as is provided in the twelfth section of this act; or under the plea of payment; and the same or such part thereof, as the defendant or defendants shall prove on trial, shall be set off and allowed against the plaintiff's demand, and a verdict shall be given for the balance due, and if it shall appear that the plaintiff be indebted to the defendant, the jury shall find a verdict for the defendant or defendants, and certify to the court the amount so found; and the court shall give judgment in favor of such defendant or defendants for the amount so certified, with the costs of his defence and execution shall be issued on such judgment as in other cases.

Set off how plead

When jug'nt  
may go for def't

SEC. 18. In all civil actions, each party shall be entitled to a challenge of three jurors, without shewing cause for such challenge; and when the jury retire to consider of their verdict, they shall be permitted to take any papers that may have been used as evidence on the trial. And no plaintiff shall suffer a nonsuit on the trial, unless he do so before the jury retire from the bar.

Challenge

SEC. 19. If during the progress of any trial in any civil cause, either party shall allege an exception to the opinion of the court, and reduce the same to writing, it shall be the duty of the judge to allow the said exception, and to sign and seal the same; and the said exception shall thereupon become a part of the record of such cause.

Exceptions to  
the opinion of  
the court

SEC. 20. It shall be sufficient for the jury to pronounce their verdict, by their foreman, in open court, without reducing the same to writing, and the clerk shall enter the same in form, under the direction of the court; and if either party may wish to except to the verdict, or for other causes to move for a new trial, or in arrest of judgment, he shall, before final judgment be entered, give, by himself or counsel, to the opposite party, or his counsel, the

Verdict

New trial

points in writing, particularly specifying the grounds of such motion, and shall also furnish the judge with a copy of the same, and final judgment shall thereupon be stayed, until such motion can be heard by the court. But no more than two new trials shall be granted to the same party, in the same cause; nor shall any verdict or judgment, be set aside for irregularity only, unless cause be shewn for the same, during the sitting of the court at the term such judgment or verdict shall be given.

**When verdicts shall not be set aside**

SEC. 21. Whenever an entire verdict shall be given on several counts, the same shall not be set aside, or reversed, if any one or more of the counts be good.

**In case of attachments declaration to be filed**

SEC. 22. In cases of attachment against absent or absconding debtors, the attaching creditor or creditors shall on the return of the attachment, or at the term of the court where the same is made returnable, file a declaration with a copy of the instrument or account, on which the attachment was issued as in other cases; after which the cause shall proceed as in other cases; and if no declaration shall be filed, the defendant, on entering his appearance, shall have a judgment against the attaching creditor for costs.

**Judgment by confession**

SEC. 23. Any person, for a debt *bona fide* due, may confess judgment, by himself or attorney duly authorized, without process; and every confession of judgment, whether with or without process, shall operate as a release of all errors in the entering up of the judgment, or making record thereof; and in no cases except when the title of land shall come in question, shall it be necessary for the clerk to make a complete record, unless specially requested by one of the parties, who shall pay the costs of the complete record.

**When arrested**

SEC. 24. Where judgment shall be arrested for any defect in the record or proceedings after the first process, the plaintiff shall not be compelled to commence his action anew; but the court shall order new pleadings to commence with the error that caused the arrest.

**Clerks to keep fee book**

SEC. 25. The clerks of the several circuit courts shall keep a fee book, in which shall be clearly and distinctly set down in items under the proper title, the costs of each suit, including the sheriffs and witnesses, as well as the clerk's fees, noting distinctly what fees have accrued on the part of each party; which fee book shall be a public record; and whenever any suit shall be determined, and final judgment entered, the costs and charges of each party litigant shall be made up, and the costs of the prevailing party shall be included in the judgment, and the clerk shall always send out a bill of such costs, with the execu-

tion; and the costs of the party failing in the suit shall be collected by fee bill, in the manner prescribed by law.

SEC. 26. If any clerk shall issue a fee bill, or a bill of costs with the execution, without first entering the same in his fee book, or if any such bill of costs or fee bill shall be so issued which shall not be in substance a copy of the recorded bill, the same shall be void: and any person having paid such bill of costs or fee bill, may recover from the clerk the amount thereof, with costs of suit, in any court having cognizance thereof: and in every bill of costs to be made and recorded as aforesaid, the names of the witnesses shall be stated, with the number of days each attended at every term.

SEC. 27. It shall not be necessary to insert in the judgment other than the docket book, the costs of the prevailing party, except in cases where a complete record shall be required; but the fee book of the clerk shall be taken and deemed a part of the record; subject, however, at all times, to be corrected by the court.

SEC. 28. If the verdict in any action of ejectment shall be given for the plaintiff, it shall and may be lawful for the same jury to assess damages for the plaintiff for *mesne profits*; and when the plaintiff shall recover judgment by default, he may have a writ of inquiry of damages for such mesne profits as in other cases; and the court shall award execution, not only for possession, but for such damages and costs of suit.

SEC. 29. The clerks of the several circuit courts shall provide and keep in their respective offices, a well bound book for entering therein an alphabetical docket of all judgments and decrees rendered in their respective courts; and it shall be the duty of said clerks, during every term or within thirty days thereafter, to enter in such docket all final judgments and decrees rendered at such term in alphabetical order, by the name of the person against whom the judgment or decree was entered, which shall contain in columns ruled for that purpose, the names of the parties, the date, the nature of the judgment or decree, the amount of the debt, damages and costs, the book and page in which it is entered, and leaving a blank column or columns for entering a note or memorandum of the satisfaction or other disposition thereof: and when any judgment or decree shall be satisfied by execution or otherwise, or shall be set aside, the said clerk shall enter a memorandum thereof in the column left for that purpose, shewing how disposed of, and the date, book and page where the evidence thereof is recorded; and such dockets may be searched by persons, at all reasonable times,

Fee bill to be entered therein

Fee book

Mesne profits

Judgment docket

penalty for not keeping

without fee: and every clerk who shall fail to keep such docket, or to enter therein any judgment or decree as aforesaid, shall forfeit and pay a sum not exceeding one hundred dollars, nor less than twenty-five dollars, and costs of suit; the one half to the use of the county where such court is held, and the other half to the use of any person who will sue for the same; to be recovered by action of debt in the circuit court.

Sheriff not returning execution and paying over money, how proceeded against

SEC. 30. Whenever any sheriff or coroner, shall neglect or refuse to make return of any execution, to him directed and delivered, where the same shall be made returnable, or shall refuse or neglect to pay over any moneys collected on such execution, the party suing out such execution on giving to said sheriff or coroner ten day's notice in writing, of his, her or their intention, may apply to the next circuit court for relief; and it shall be the duty of such court on proof, by affidavit of the delivery of such execution, if the same be not returned; or on proof that such money has been collected and not paid over, to grant an order against such sheriff or coroner, requiring him to make immediate return of such execution; or if the amount or any part thereof has been collected, to pay over the same immediately with twenty per cent thereon from the time of collection till paid; and on failure of such sheriff or coroner to comply with such order on demand, and being served with a copy of the order, he shall be judged to be in contempt, and punished accordingly; or the plaintiff in such execution may have judgment for the money with twenty per cent. thereon so collected, and have execution as in other cases.

SEC. 31. The clerk shall enter in a book to be kept by him for the purpose, the return of the sheriff or coroner of all executions within thirty days after the same shall be returned, under the penalty imposed by the twenty-ninth section of this act.

Appeals from the circuit to the supreme court

SEC. 32. Appeals from the circuit courts to the supreme court shall be allowed in all cases where the judgment or decree, appealed from, be final, and shall amount exclusive of costs, to the sum of twenty dollars, or relate to a franchise or freehold: *Provided*, such appeals be prayed for at the time of rendering the judgment or decree, and provided the party praying for such appeal, shall by himself or agent or attorney give bond with sufficient security, to be approved of by the circuit court, and filed in the office of the clerk of the circuit court, within the time limited by the court; which bond shall be in a reasonable sum, sufficient to cover the amount of the judgment appealed from, and all costs, and conditioned for the payment of the judgments, costs,

interest and damages, in case the judgment shall be affirmed, and also for the due prosecution of said appeal, and the obligee in such bond may, at any time, on a breach of the conditions thereof, have and maintain an action at law as on other bonds.

SEC. 33. The appellant shall lodge in the office of the clerk of the supreme court an authenticated copy of the record of the judgment or decree appealed from, by or before the third day of the next succeeding term of said supreme court, provided that if there be not thirty days between the time of making the appeal, and the sitting of the supreme court, then the record shall be lodged as aforesaid, at or before the third day of the next succeeding term of said supreme court, otherwise the said appeal shall be dismissed unless further time to file the same shall have been granted by the supreme court upon good cause shewn.

SEC. 34. In all cases of appeals and writs of error the supreme court may give final judgment, and issue execution or remand the cause to the circuit court, in order that an execution may be there issued or that other proceedings may be had thereon.

SEC. 35. No writ of error shall operate as a supersedeas, unless the supreme court or some justice thereof in vacation, after inspecting a copy of the record, shall order the same to be made a supersedeas, nor until the party procuring such writ shall file a bond in the manner, and with the condition required in cases of appeals: when the clerk issuing such writ shall endorse thereon, that it shall be a supersedeas, and operate accordingly; and the parties in writs of error shall be subject to the same judgment, and mode of execution, as is provided in case of appeals.

SEC. 36. Whenever the supreme court shall be equally divided in opinion on hearing an appeal or writ of error, the judgment of the court below shall stand affirmed.

SEC. 37. The circuit courts in charging the jury, shall only instruct as to the law of the case.

SEC. 38. All acts and parts of acts coming within the spirit and meaning of this act, are hereby repealed; but no rights acquired shall be affected by this act. This act to take effect on the first day of June next.

[Approved, Jan. 29, 1827.]

Acts repealed

In force Feb. 2  
1827*AN ACT concerning Practice.*

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That any instrument of writing, to which the maker shall affix a scrawl by way of seal, shall be of the same effect and obligation, to all intents, as if the same were sealed.

SEC. 2. The supreme court in case of a partial reversal, shall give such judgment or decrees, as the inferior court ought to have given; or remand the cause to the inferior court for further proceedings, as the case may require.

SEC. 3. A negro, mulatto, or Indian, shall not be a witness in any court, or in any case, against a white person.

A person having one fourth part negro blood shall be adjudged a mulatto.

[Approved, Feb. 2, 1827.]

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PROMISSORY NOTES, BONDS, AND DUE  
BILLS, &c.

In force July 1,  
1827

*AN ACT relative to Promissory Notes, Bonds, Due Bills, and other instruments in writing, and making them assignable.*

Obligation to  
pay

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all promissory notes, bonds, due bills, and other instruments in writing, made or to be made, by any person or persons, body politic or corporate, whereby such person or persons promise, or agree to pay any sum of money or articles of personal property, or any sum of money, in personal property, or acknowledge any sum of money or article of personal property, to be due to any other person or persons, shall be taken to be due and payable, and the sum of money or article of personal property therein mentioned, shall by virtue thereof be due and payable to the person or persons to whom the said note, bond, bill, or other instrument in writing is made. And any such note, bond, bill, or other instrument in writing made payable to any person or persons, shall be assignable by endorsement thereon, under the hand or hands of such person or persons, and of his, her or their assignee or assignees in the same manner as bills of exchange are, so as absolutely to transfer and vest the property thereof in each and every assignee or assignees, successively. And any assignee or assignee to whom

such sum of money or personal property is by such endorsement or endorsements made payable, or in case of the death of such assignee or assignees, his her, or their executors or administrators may in his, her, or their own name or names, institute and maintain the same kind of action for the recovery thereof against the person or persons who made and executed any such note, bond, bill, or other instrument in writing, or against his, her, or their heirs, executors or administrators, as might have been maintained against him, her or them, by the obligee, or payee, in case the same had not been assigned; and in every such action in which judgment shall be given for the plaintiff or plaintiffs, he, she, or they shall recover his, her, or their damages and costs of suit, as in other cases: *Provided*, that the maker shall never be allowed to allege payment to the payee, made after notice of such assignment as a defence against such assignee or assignees.

SEC. 2. Every assignor or assignors, or his, her or their heirs, executors or administrators of every such note, bond, bill or other instrument in writing, shall be liable to the action of the assignee or assignees thereof, or his, her, or their executors or administrators, if such assignee or assignees shall have used due diligence by the institution and prosecution of a suit against the maker or makers of such assigned note, bond, bill other instrument of writing, or against his, her, or their heirs, executors or administrators, for the recovery of the money or property due thereon, or damages in lieu thereof: *Provided*, that if the institution of such suit would have been unavailing, or that the maker or makers, had absconded, or left the state, when such assigned note, bond, bill, or other instrument in writing became due, such assignee or assignees, or his or her executors or administrators may recover against the assignor or assignors, or against his or their heirs, executors or administrators, as if due diligence by suit had been used.

SEC. 3. If any such note, bond, bill or other instrument in writing, shall be endorsed after the day on which the money or property therein mentioned, becomes due and payable, and the endorsee shall institute an action thereon against the maker and signer of the same, the defendant being maker and signer, shall be allowed to set up the same defence that he might have done, had the said action been instituted in the name and for the use of the person or persons to whom the said note, bond, bill or other instrument in writing, was originally made due and payable.

SEC. 4. If any such note, bond, bill, or other instru-

Notes. &c. may  
be assigned

Notice of as-  
signment

Assignors liabil-  
ity where due  
diligence is  
used

Effect of as-  
signment after  
note becomes  
due

PROMISSORY NOTES, BONDS, AND DUE  
BILLS, &c.

**Effect of assignment before note becomes due**

ment of writing, shall be endorsed before the day the money or property therein mentioned, becomes due and payable; and the endorsee shall institute an action thereon, the defendant may give in evidence at the trial any money or property actually paid on the said note, bond, bill, or instrument in writing, before the said note, bond, bill, or other instrument in writing, was endorsed or assigned to the plaintiff, on proving that the plaintiff had sufficient notice of the said payment, before he or she accepted or received such endorsement.

**Consideration**

Sec. 5. In any action commenced, or which may hereafter be commenced in any court of law in this state, upon any note, bond, bill, or other instrument in writing, for the payment of money or property, or the performance of covenants or conditions by the obligee or payee thereof, if such note, bond, bill, or instrument in writing, was made or entered into without a good or valuable consideration; or if the consideration upon which such note, bond, bill or instrument in writing, was made or entered into, has wholly or in part failed, it shall be lawful for the defendant or defendants against whom such action shall have been commenced by such obligee or payee, to plead such want of consideration, or that the consideration has wholly, or in part failed; and if it shall appear that any such note, bond, bill, or instrument of writing, was made or entered into without a good or valuable consideration, or that the consideration has wholly failed, the verdict shall be for the defendant; and if it shall appear that the consideration has failed in part, the plaintiff shall recover according to the equity of the case: *Provided*, that nothing in this section contained shall be construed to affect or impair the right of any *bona fide* assignee or assignees, of any instrument made assignable by this act, where such assignment was made before such instrument became due.

**Proviso**

**Fraud pleaded in bar**

Sec. 6. If any fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid, such fraud or circumvention may be pleaded in bar to any action to be brought on any such instrument so obtained, whether such action be brought by the party committing such fraud or circumvention, or any assignee or assignees of such instrument.

**Obligations for personal property**

Sec. 7. In all cases where any of the before mentioned instruments of writing are for the payment or delivery of personal property, other [than] money, and no particular place be specified in such instruments of writing for the payment or delivery thereof, it shall be lawful for the maker of any such instrument of writing, to tender or cause to

be tendered on the day mentioned in any such instrument, the personal property therein mentioned, at the place where the obligee or payee of any such instrument, resided at the time of the execution thereof: *Provided however*, if such personal property be too ponderous to be easily moved, or if the obligee or payee of such instrument had not at the time of the execution of such instrument of writing, a known place of residence in the county where the maker or makers resided; then it shall be lawful to tender such personal property at the place where the maker or makers of such instrument resided, at the time of the execution thereof. Any tender made in pursuance of this section shall be equally valid and legal, in case any such instrument of writing shall have been assigned in pursuance of the first section of this act, as if no such assignment had been made.

SEC. 8. A legal tender of any such personal property, shall discharge the maker of any such instrument, from all liability thereon: and the property thus tendered, is hereby declared to be vested in, and belong to the legal holder and owner of any such instrument of writing, and he may maintain an action for the recovery thereof, or for damages, if the possession be subsequently illegally withheld from him: *Provided however*, if any such property so tendered, shall be of a perishable nature, or shall require feeding or other sustentation; and the person owning and holding such instrument of writing be absent at the time of tendering the same, it shall be lawful for every person making such tender, to preserve, feed, or otherwise take care of the same, and he shall have a lien on such tendered property for his reasonable trouble and the expense of feeding or sustaining such property, until payment be made for such trouble and expense.

SEC. 9. The act entitled "An act making promissory notes, bonds, bills and writings obligatory negotiable," approved February 6th, 1819; and the act entitled "An act to regulate the practice in certain cases," approved February 24th, 1821, shall be, and the same are hereby repealed: *Provided*, that the repeal thereof shall not affect any rights or defences acquired under said acts. This act to take effect from and after the first day of July next.

Acts repealed

[Approved, Jan. 3d, 1827.]

In force Feb. 15, 1827. *AN ACT to provide for the preservation of the property of the State.*

Furniture how preserved

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That at the close of every session of the general assembly, the secretary of state shall cause all the tables, chairs, desks, and other furniture of the two houses of the general assembly, to be placed in the small room adjoining the senate chamber, and securely locked therein; and he shall not permit any part of said furniture to be used during the recess of the general assembly, for any purpose whatever.*

Papers how returned

SEC. 2. The secretary of the senate, and clerk of the house of representatives, at the close of each session of the general assembly, shall deliver to the secretary of state, all books, bills, documents and papers, in the possession of either branch of the general assembly, correctly labelled, folded and classed, according to the subject matter of such documents respectively; and the secretary of state is hereby required to file the same in his office.

Sec'y of state to make certain contracts

SEC. 3. The secretary of state is hereby authorized and empowered, to contract with some person, on the best terms he can, to procure conductors, and to have such repairs made to the eaves and gable ends of the state house, as will be necessary to preserve it from injury; and make such alterations in the chimneys, as may be necessary to prevent their smoaking; a statement of the expenses for which, he shall lay before the governor, who, if the amount be reasonable, shall allow the same; and the auditor shall issue his warrant on the treasury accordingly. And as often as the windows and doors of said house shall need repairs, or the furniture thereof to be replenished or repaired, the said secretary shall have the same done, which shall be allowed and paid for as above; and he shall permit the firewood which may remain on hand, at the end of the general assembly, to be used for the public offices.

To employ a person to take care of state house

SEC. 4. The secretary of state is authorized to employ a fit person to take charge of the state house, who shall permit the senate chamber or representatives' hall to be used by the district court of the United States, by the supreme, circuit, and county commissioners' courts, by the auditor of public accounts for the sale of lands for taxes, and by the people of Vandalia for public meetings. The person so employed shall receive a compensation for his services, not exceeding twenty-five state paper dollars per annum, payable quarterly.

SEC. 5. All acts and parts of acts, coming within the

purview of this act, are hereby repealed. This act to take effect from its passage.

[Approved, Feb. 15, 1827.]

## REVENUE.

### *AN ACT to provide for raising a Revenue.*

In force March  
1, 1827

Sec. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all lands claimed by individuals or bodies politic or corporate, whether by deed, entry, bond for conveyance, patent, grant, or otherwise; except town lots, lands belonging to the United States or this state, and such other lands as are exempted from taxation, by virtue of the compact between the United States and this state; are hereby declared subject to taxation; and, for that purpose, are hereby divided into classes, valued and taxed as follows: Lands of the first quality shall compose the first class, shall be valued at four dollars, and taxed at the rate of two cents per acre: Lands of the second quality, shall compose the second class, shall be valued at the rate of three dollars, and taxed at the rate of one and a half cents per acre: Lands of the third quality shall compose the third class, shall be valued at two dollars, and taxed at the rate of one cent per acre.

Lands taxable

Classes

Sec. 2. All non-residents, owning or claiming lands in this state, shall, either by themselves or agents, enter the same in the office of the auditor of public accounts, particularly describing the land, and the class to which each tract belongs, accompanied with an affidavit of such non-resident, or his agent, stating that such list contains a true classification and description of the property therein described, to the best of the deponent's knowledge and belief. Such non-resident shall not be required to list his lands more than once; but the auditor shall annually charge the lands, described in such list, with tax according to the description contained in the same, until it shall be listed in a different manner. Every non-resident shall pay into the state treasury, on or before the first day of August, annually, the tax imposed upon his land by this act.

Non resident  
to enter lands  
in Aud. office

Sec. 3. The auditor of public accounts, shall, as soon as practicable, after the first day of August, annually, make out a transcript from his books of all lands owned by non-residents, on which any taxes shall be due and unpaid adding the interest and costs of advertising, and costs of

Auditor to  
make out tran-  
scripts

## REVENUE.

And advertise  
where tax re-  
mains unpaid

sale, to the same; stating the year for which taxes are due, and the amount of taxes, interest and costs, and prefixing the name of the patentee to the description of each tract described in such transcript; and shall cause the same to be published three weeks successively, in the paper printed at the seat of government, or in some other paper printed in this state; the last of which publications shall be at least two months before the day of sale. The auditor shall add to such transcript or list, a notice of the time and place of sale. The printer who shall publish said transcript and notice, shall be entitled to receive, out of the state treasury, on the warrant of the auditor, ten cents for each tract described in such advertisements; payable in the same kind of funds which are receivable in payment of taxes. The auditor shall charge ten cents on each tract of land, as the costs of sale, and shall draw from the treasury the said sum of ten cents for each tract sold by him to individuals for taxes.

SEC. 4. On the first Monday in January, annually, the auditor shall proceed to sell, at the door of the state house, or at some other public place in the town of Vandalia, all the lands advertised as aforesaid, on which the taxes, interest and costs shall remain unpaid, or so much of each tract as will bring the amount of taxes and costs due. The sale shall be continued from day to day, until the same shall be completed. If any tract when exposed to sale, will not sell for the amount of the taxes, interest and costs due thereon, the state shall be considered the purchaser of the same. The auditor shall certify to the treasurer the amount of all sales, except where the state becomes the purchaser; and upon receiving the purchase money, the treasurer shall give the purchaser, or his agent, a receipt for the same; and on presenting such receipt to the auditor, the purchaser shall be entitled to receive, at his option, either a certificate of such purchase, or a deed in the following form, to wit: "The auditor of public accounts of the state of Illinois, to all who shall see these presents, Greeting: KNOW YE, that whereas I did on the

day of                    at the town of Vandalia, in conformity with all the requisitions of the several acts in such cases made and provided, expose to public sale, a certain tract of land, being (*here insert the description of it*) for the sum of                    being the amount of tax for the year of                    (or the years of, as the case may be) with the interest, (if any) and costs, chargeable on said tract of land: and whereas at the time and place aforesaid,                    offered to pay the aforesaid sum of money for (the whole tract or part thereof, as the case may be) which was the least

Sale provided  
for

Deed to pur-  
chaser

quantity bid for; and the said \_\_\_\_\_ has paid the sum of \_\_\_\_\_ into the treasury of the state: I have granted, bargained, and sold, and by these presents, as auditor of the state aforesaid, do grant, bargain, and sell, (*here describe the tract purchased*) to the said \_\_\_\_\_ (or his assignee) his heirs and assigns, to have and to hold the said tract of land, to the said \_\_\_\_\_ and his heirs forever: subject, however, to all the rights of redemption provided for by law. In testimony of which, the said auditor has hereunto subscribed his name, and affixed his seal, this \_\_\_\_\_ day of \_\_\_\_\_ *Auditor. (SEAL.)*"

Which deed, executed as aforesaid, shall vest a perfect title in the purchaser, unless the land shall be redeemed according to law, or the former owner shall shew that the taxes for which it was sold had been actually paid as required by law, or that the land was not legally subject to taxation.

SEC. 5. Any lands which shall be sold by the auditor for the taxes and costs thereon, may be redeemed at any time within two years from the day on which the same were sold, by paying into the state treasury (upon the auditor's certificate, as in other cases) double the amount of the taxes, interest, and costs, for which they were sold. Lands belonging at the time of sale, wholly or in part to heirs under lawful age, may be redeemed at any time before the expiration of one year, from the time when the youngest of said heirs becomes of full age: But no person shall be permitted to redeem any lands sold for taxes, unless he shall, at the same time, pay into the treasury, all taxes which may have become due subsequently to such sale, together with interest thereon, at the rate of six per cent. per annum, from the time they became due. Whenever any person or persons, after the expiration of two years from the time when any tract of land was sold for the taxes thereon, shall apply to the auditor to redeem such land, under the provisions of this act, relative to lands owned by minor heirs, it shall be incumbent on the person or persons so applying, to produce to the auditor, a certificate from the judge, clerk, or other proper officer of the proper court having jurisdiction of wills and testaments, and intestate estates, that it appears from the records of said court, that such person or persons are the legal heir or heirs of the former owner of said tract of land; and that said former owner died before the day on which said land was sold for taxes; and also certifying the real age of the youngest of said heirs. In cases where there has been no will, nor any settlement of intestate estate, before the court to which such jurisdiction appertains,

Provisions for  
redeeming

Relative to mi-  
nor heirs & the  
evidence of  
heirship

such heir or heirs shall go before some court of record, and exhibit proof of his, her or their heirship, minority, and present age; and on producing the certificate of the clerk of such court, to the above facts, such heir or heirs shall be entitled to the same rights of redemption as above provided. Such certificate shall bear the signature of the clerk of the court, the genuineness of whose authentication shall be certified by the judge, and the official character of such judge shall be certified by the secretary of the state in which such proof shall be exhibited, with the seal of said state affixed to such certificate. Whenever any heir shall redeem any land as aforesaid, the written evidence on which his right to redeem the same is founded, shall be delivered to the auditor, and by him filed in his office.

SEC. 6. The auditor is hereby empowered, from time to time, to contract for and obtain from the several land offices, at which lands lying within this state are sold, abstracts containing a description of lands entered in such land offices, the date of entry, and the names of patentees, together with the maps of such parts of the several land districts, as lie within this state, in all cases where such maps have not been already procured by him. He is also authorized to obtain as aforesaid, as often as it shall be necessary, abstracts of all lands relinquished to the United States.

SEC. 7. As soon as practicable after the passage of this act, the auditor shall cause maps to be made of the several counties in which taxable lands are contained, on a scale of one inch to the mile, designating thereon by appropriate characters, the lands reserved for seminary, school, saline, and other public purposes, the lands which have been divided into town lots, the lands which have been purchased of the United States, and those which have been relinquished. He shall also cause to be made, for each of the counties aforesaid, a well bound book containing a description of every tract of land within such county, with the date of its purchase from the United States, leaving sufficient space between the lines to insert the description of a subdivision of any tract. To the description of each tract shall be prefixed the name of the patentee, and of the present owner where the same is known. The tracts shall be arranged according to situation, beginning with the lowest number of range, township, and section. The lands which belong to residents of the county, shall be designated by the word *Resident*, those belonging to persons residing in other counties of this state, by the words resident of county (naming the county in which

How abstracts  
may be obtained

Maps & books  
to be made for  
counties

And how made

the owner resides;) those belonging to persons not residing within this state, by the letters *N. R.* those reserved for the use of schools, by the letters *S. L.* those reserved for the use of a seminary of learning, by the word *Seminary*; those reserved for saline purposes by the word *Saline*; and those which have been divided into town lots, by the name of *the Town*. But no land shall be considered as having been divided into town lots, until a plat of the town shall have been recorded as required by law.

SEC. 8. On or before the first day of April next, or as soon as practicable thereafter, the auditor shall cause to be delivered to the clerk of the commissioners' courts of each of the several counties, containing taxable lands, a map and book, made and compiled according to the provisions of the preceding section of this act. The said clerk shall keep said map and book in his office, subject to the inspection of any person who may wish to examine the same, and shall, from time to time, correct such inaccuracies, and supply such defects, as may come to his knowledge.

Books & maps  
to be delivered  
to C. C. clerk

SEC. 9. At their March term, annually, or as soon thereafter as may be, the county commissioners' courts of the several counties in this state, shall appoint some fit person to act as county treasurer, who shall, before he enters upon the duties of his office, take and subscribe the following oath, to wit: "I A. B. treasurer of the county of

Provision for  
appointing  
county treasur-  
er

in the state of Illinois, do solemnly swear (or affirm) that I will faithfully, impartially, and to the best of my skill and judgment, perform the duties required of me by law, as treasurer of said county of A. B. Sworn to and subscribed before me this day of 18 before me C. D. Justice of the peace for county.

His oath

SEC. 10. Said county treasurer, before he enters upon the duties of his office, shall also execute a bond, in such penalty and with such security as the county commissioners shall deem sufficient; which bond shall be in the following form, to wit: "Know all men by these presents, that we, A. B. principal, and C. D. and E. F. securities, all of the county of and state of Illinois, are held and firmly bound, to the people of the state of Illinois, in the penal sum of dollars, for the payment of which well and truly to be made we bind ourselves, each of us, our heirs, executors and administrators, firmly by these presents; signed with our hands, and sealed with our seals, dated at the day of 182 . The condition of the above bond is such, that if the above bound A.

Form of bond

**B.** shall perform all the duties required by law to be performed by him, as treasurer of the said county of in the time and manner prescribed by law; and when he shall be succeeded in office shall surrender and deliver over to his successor in office, all books, papers, and moneys belonging to said county, and appertaining to his said office, then the above bond to be void, otherwise to remain in full force.

A. B. [SEAL.]

*Signed, sealed and delivered,* } C. D. [SEAL.]  
*in presence of G. H.* } E. F. [SEAL.]

SEC. 11. It shall be the duty of the sheriff of each county, as soon as a county treasurer for such county shall have been appointed and qualified to office, as herein provided, to deliver over to such county treasurer, all books and papers properly appertaining to the office of county treasurer, and to pay over to him all moneys in his hands belonging to the county, taking the treasurer's receipt for the same.

**Sheriff to de-  
liver books, &c  
to treasurer**

**Duty of clerk**

SEC. 12. On or before the tenth day of April, annually, the clerk of the commissioners' court shall furnish the county treasurer with a transcript from the book received by him from the auditor, which transcript shall contain a list of all the taxable lands in the county, except such as are known to be owned by persons residing out of the county, with the names of the patentees, and of the present owner, where the same are known.

**Duty of treas-  
urer**

**How property  
is listed**

**To note errors**

SEC. 13. On or before the tenth day of April, annually, or as soon thereafter as he shall receive from the clerk the transcript aforesaid, the county treasurer shall proceed to take lists of taxable lands, and of all other taxable property upon which the county commissioners' court shall have ordered a tax to be levied for the current year. The county treasurer shall call at the place of residence of each owner of taxable property, for a list of the same; and if any such owner shall be absent, he shall list such person's taxable property, according to the best information he can obtain; which list may be corrected by the owner, under oath, on application to the county treasurer, at any time before he shall have returned the tax list, to the clerk of the commissioners' court. The county treasurer is hereby authorized and required to administer an oath or affirmation to every person who may give him a list of his taxable property, touching the quality and description of his lands, and the quantity and value of his other taxable property. The county treasurer shall finish taking lists of taxable property, previous to the first day of August, annually. He shall note upon the transcript furnished by the clerk, all errors and deficiencies which he

may discover in the same, inserting the name of the present owner of each tract, where it has not been previously done; and the clerk of the county commissioners' court shall, in the presence of the county treasurer, proceed to make the necessary corrections and alterations in the book furnished by the Auditor.

SEC. 14. Any resident in this state owning lands in a county in which he does not reside, shall list such lands in the office of the auditor of the state, and pay the taxes thereon into the state treasury, in the same manner as is provided in the case of non-residents.

SEC. 15. Whenever in their opinion the revenue arising to the county from the tax on lands shall be insufficient to defray the county expenses, the county commissioners' court shall have power to levy a tax not exceeding one half per cent. upon the following descriptions of property, viz. on town lots, if such lots be not taxed by the trustees of such town, on slaves, and indentured or registered negro or mulatto servants, on pleasure carriages, on distilleries, on stock in trade, on all horses, mares, mules, asses, and neat cattle, above three years of age, and on watches with their appendages, and such other property as they shall order and direct.

Residents to list lands in auditor's office, in certain cases

Power of C. com. courts in levying taxes

SEC. 16. When a tax shall be ordered to be levied on other property besides lands, the county treasurer shall make out an abstract of the property so taxed, which abstract shall be separate from the list of taxable lands. Said abstract shall as near as circumstances will permit, be in the following form, to wit:

*"List of property taxed by the Commissioners' Court of*

*County for the year 18* , with the owners' names, valuation of said property, and amount of tax thereon:

Form of abstract

Names of owners.	Town Lots.		Slaves & servants of color.		Pleasure carriages.		Value of stock in trade.		Value. Distilleries.	
	Nos.	Value.	Nos.	Value.	Nos.	Value.				
Richard Roe	3	\$1,50	1	\$175	2	\$300	\$4500.	\$600.		

Horses, mares, &c.		Watches.		Total value of property.		Total am't. of tax.	
Nos.	Value.	No.	Val.				
15	\$300	1	\$30		\$6,255.	\$31,27	

Which list, or abstract, the county treasurer shall deliver to the clerk of the commissioners' court, on or before the first day of August, annually.

**SEC. 17.** The clerk of the commissioners' court, in each county, except those on the military tract, shall charge the sheriff with the amount of tax on all lands lying within the county, owned by residents thereof, and with the amount of tax on such other property as shall have been ordered to be taxed by the commissioners' court; and shall then deliver said lists or abstracts of lands and other taxable property, to the sheriff who shall proceed to collect the taxes thereon, by calling upon each owner of the same, at his or her place of residence. If any owner of taxable property shall be absent from home, at the time when the sheriff shall call for the tax, the sheriff shall leave at such person's residence, a written notice stating the amount of tax due from him, and notifying him to pay the same to said sheriff previous to the fifteenth day of October thereafter.

**Sheriff to give special receipt** On receiving any taxes, the sheriff shall give the person paying the same, a written or printed receipt for the same; and when any tax is paid to him on land, he shall, in his receipt, describe the same as particularly as it is described in the tax list.

**When settlement to be made** **SEC. 18.** The sheriff shall settle with the clerk of the county commissioners' court, on the first Monday in December, annually; and said clerk shall allow the sheriff a credit for all taxes which he shall have been unable to collect by reason of there being no bidder for the property when exposed to sale for the taxes, and the amount found due to the county, the sheriff shall immediately pay into the county treasury; and for failure to pay the same as aforesaid, the sheriff shall forfeit to the county one per cent. per week upon the whole amount so remaining unpaid.

**Sheriff to keep account of kinds of money rec'd.** **SEC. 19.** Each sheriff shall keep a regular account or abstract of all sums received by him in payment of taxes, describing the amount and kind of funds, in which such taxes were paid, which abstract shall be as near as circumstances will admit, in the following form:

*"An account of the moneys and public securities received by A. B. Sheriff of the county of in the payment of taxes, during six months, ending the day of 18*

When received.	Of whom rec'd.	Illinois state paper.		Audit'r's Warrants.		County orders.	Current money.	Total am't rec'd
		Nom.	In'st am't.	Nom.	In'st am't.			
Sept. 5,	J. D.	\$5 00	\$55	\$10.	\$4.	\$7 50	\$0 12	\$23 62

A copy of which abstract, the sheriff shall deliver to the clerk of the commissioners' court at the time of making his settlement with the county; and the clerk shall keep the same in his office, subject to the inspection of any persons who may wish to examine the same. The sheriff shall be required to pay over to the county treasurer, the taxes belonging to the county, in as good funds as he shall have received. When the sheriff shall pay over to the county treasurer any monies, or public securities, received by him for the county, said treasurer shall give the sheriff a receipt therefor, specifying particularly the amount of each kind of funds in which such payment was made.

SEC. 20. The sheriff shall pay into the county treasury the whole of the tax collected by him on property taxed by order of the commissioners' court; and in all counties except those on the military bounty tract, the sheriff shall also pay into the county treasury, the whole amount of the tax collected by him on lands lying within the county. The sheriffs of the several counties in the military bounty tract, shall pay into the state treasury, on or before the first day of January annually, all the taxes collected by him on lands lying in said counties, deducting seven and a half per cent. as his compensation for collecting the same; and a similar compensation shall be allowed to all sheriffs for collecting taxes on real and personal property.

SEC. 21. In lieu of the taxes paid by residents of the several organized counties, on the military bounty tract, upon lands lying in said counties, the state treasurer shall pay on the warrant of the auditor to the county commissioners of each of the counties of Pike, Fulton, Peoria, Calhoun, Adams, and Schuyler, for the use of the county, the sum of two hundred and seventy-five state paper dollars annually; and any county which may hereafter be organized upon the military tract, shall, upon its organization, be entitled to receive a similar sum, from the state treasury.

SEC. 22. The clerk of the commissioners' court of each of the several counties on the military bounty tract, shall on or before the first day of August annually, transmit to the auditor, by mail or otherwise, a correct list of all lands listed for taxation in such county.

SEC. 23. The clerk of the commissioners court of each of the counties in this state, except those on the military tract, shall, on or before the first day of August annually, transmit to the auditor, by mail or otherwise a list of all taxable lands in the county, which shall not have been listed for taxation in such county, and which are not known to

Further duty  
of sheriffs

In the military  
tract

Provision for  
the counties in  
the military  
tract

Further duty  
of clerks

Further duty  
of clerks

belong to residents of the same. All taxable lands which shall not be known to belong to residents of the counties in which they are situated, shall be charged with tax, advertised and sold in the same manner as lands belonging to non-residents.

**SEC. 24.** If any person, after having been called upon by the sheriff to pay his tax, shall neglect or refuse to pay the same for the period of twenty days after such notice, the sheriff shall proceed to advertise such portion of such person's taxable property as he shall deem sufficient, on the court house door, and in three other of the most public places in the county, giving in such advertisement fifteen days' notice of the time and place of sale, and particularly describing the property to be sold; at the time and place appointed, unless the taxes and costs shall have been previously paid, the sheriff shall proceed to sell said property, or so much of it as will bring the amount of tax and costs. The land of delinquents residing in the state, shall not be sold by the sheriff for taxes until all their personal property, except such as is exempted by law from execution, for the payment of debts, shall have been previously sold. Whenever the sheriff shall sell any tract of land for taxes thereon, he shall give the purchaser thereof, a deed, as near as circumstances will admit, in the form prescribed by this act for similar deeds executed by the auditor of public accounts. If any tract of land, when offered for sale by the sheriff for the taxes and costs thereon, will not sell for the amount thereof, the county shall be considered the purchaser of the same.

**SEC. 25.** All sales of lands for taxes, whether by the Auditor or Sheriff, the officer selling, shall previous to the sale, designate in what part of the tract, the part sold shall be located, and shall give his certificate, or make his deed accordingly.

**SEC. 26.** The sheriff shall make return to the clerk of the commissioners' court of all lands sold by him for taxes, designating particularly the part sold; and said clerk shall make a record thereof in his office. The former owner, or any person for him, may redeem any such land within two years thereafter, by paying into the county treasury, on the certificate of the clerk of the commissioners' court double the amount for which it was sold, together with all subsequent taxes thereon; and said clerk on the presentation of the county treasurer's receipt, shall give to the person applying, a certificate of the redemption of such land. The person who purchased said land, at the tax sale, or his legal representative, may draw from the county treasury on the certificate of the clerk as aforesaid, the

Provision for  
enforcing the  
collection of  
residents' tax

Duty of sheriff  
and clerk upon  
sale of lands of  
residents

sum so paid in redeeming such land, together with all subsequent taxes, which he may have paid thereon. Heirs under lawful age, owning any lands sold for taxes by the sheriff, shall have the same rights to redeem their lands as are given to such persons in the case of lands sold by the auditor.

SEC. 27. All lands sold to the state or county, for the taxes and cost thereon, unless redeemed previously to advertising another sale of lands for taxes, shall be charged with the amount for which it was sold, and fifty per cent. advance thereon, together with all taxes, which would subsequently have accrued to the state or county, if the state or county had not become the purchaser thereof; and such land shall be advertised and sold again in the same manner as if it belonged to individuals. Lands sold to the state or county for taxes, may be redeemed, by paying the sum for which they were sold, and fifty per cent. advance thereon, together with all taxes which may subsequently become due.

SEC. 28. The books and records belonging to the office of the auditor of public accounts, shall be deemed sufficient evidence to prove the sale of any tract of land for taxes, or the redemption of the same, or the payment of taxes thereon.

SEC. 29. No sheriff or deputy sheriff, during his continuance in office shall be eligible to the office of county treasurer, nor shall any county treasurer be permitted to act as deputy sheriff.

SEC. 30. It shall be the duty of the state treasurer, and of the several sheriffs to receive in payment of taxes, notes of the bank of the United States, gold and silver coins, notes of the state bank of Illinois, or either of its branches, auditor's warrants; and the sheriffs shall also receive county orders at par in payment of any taxes, which are to be paid into the county treasury. That all warrants issued by the auditor, under the several laws passed the present session, shall be received in payment of debts due the state or state bank of Illinois or its branches.

SEC. 31. It shall be the duty of the auditor of public accounts, upon the application of any person indebted to the state, to specify in a certificate directed to the treasurer, the amount of such demand, designating particularly the branch of revenue on which it is due, and if on lands, describing distinctly each tract, and the amount due thereon; such certificate being presented to the treasurer, he shall receive the amount due, and give the party duplicate receipts for the same, designating particularly as above, on what account the same has been paid, the

How land may be redeemed

Liable to be again sold

In what money taxes may be paid

General provi-  
sion for war-  
rants

Duty of Audi-  
tor and Treas-  
urer in the re-  
ceipt of taxes

amount paid, and, if on lands, describing each tract. The treasurer shall also endorse on one of the said duplicate receipts the kind, or kinds of funds, in which payment has been made; one copy of which receipt, so endorsed, shall be filed in the auditor's office, and the other copy shall be countersigned by the auditor, and the money received for, shall be credited on the auditor's books, and the receipt countersigned by the auditor as aforesaid, shall be delivered to the person making the payment. No payment shall be considered as having been made until the treasurer's receipt shall have been deposited in the auditor's office.

**Statement of fiscal concerns to be made out and posted up**

SEC. 32. It shall be the duty of the commissioners' court of each county to cause a complete statement in writing, of the fiscal concerns of the county, to be made out at their December term annually: and the clerk of said court shall keep said statement posted up, in his office for the period of one month at least, from the end of said term; and for failing to perform this duty, he shall pay a fine of ten dollars. Each county commissioner who shall neglect to cause such statement to be made out, shall also pay a fine of ten dollars, to be recovered by action of debt, at the suit of any individual, before any justice of the peace of the county; one half for the use of the county, and the other half with costs of suit, for the use of the person so suing.

**Penalty for neglect**

SEC. 33. If any sheriff shall corruptly receive taxes from any person and fail to make a return of the same, or shall receive a greater sum than he shall make return of, such sheriff shall be liable to be indicted, and on conviction, shall be removed from office.

**Liability of sheriffs**

SEC. 34. When no tax shall be levied by the commissioners' court on town lots and personal property, it shall not be the duty of the county treasurer to go through the county to receive lists of taxable lands, unless he shall be required to do so by the commissioners' court, for the purpose of supplying deficiencies in the book furnished by the auditor.

**Provision where resident removes**

SEC. 35. Whenever a person whose land is listed for taxation, in the auditor's office, shall remove into the county in which such land is situated, he shall be permitted to pay the taxes on the same in such county, on giving information in writing of such removal, to the auditor of the state, and to the clerk of the commissioners' court of the county. If any land listed in the auditor's office shall become the property of any resident of the county in which the land lies, such person shall also be permitted to pay the taxes on said land in the county on giving information

as above provided. But until information shall be given as aforesaid, the auditor shall charge with tax, advertise and sell said lands in the same manner as provided in the case of non-residents. The taxes on land sold by the auditor for the taxes thereon, shall for two years after such sale, be paid into the state treasury; after which period, on giving information as aforesaid, the taxes on such lands may be paid into the treasury of the county in which the lands are situated, if the proprietor be a resident of such county.

SEC. 36. The sheriff shall receive for advertising and selling any property for taxes, fifteen per cent. on the amount of such sales, such compensation to be added to the sum for which the property is sold.

SEC. 37. The county commissioners' court shall allow the county treasurer for his services to be performed under this act, such compensation as they shall deem reasonable, not exceeding two dollars per day, for taking lists of taxable property, and two per cent. upon the moneys paid out of the county treasury.

SEC. 38. The clerk of the commissioners' court shall, on or before the first Monday in December annually, furnish the county treasurer with a certified list of all county orders issued by said court, during the twelve months, immediately preceding that time, specifying the date, number and amount of each, together with the name of the person in whose favor such order is drawn; and the county treasurers shall pay such orders according to their seniority.

SEC. 39. If any county treasurer shall fail or refuse to perform any of the duties required of him by law, he shall forfeit a sum not exceeding fifty dollars, nor less than twenty, to be recovered before any justice of the peace, by action of debt; one half to the person suing for the same, and the other half to the use of the county.

SEC. 40. Whenever it shall appear to the satisfaction of the auditor, that any lands have been sold by him for taxes through mistake, when the same belonged to the United States, or were not legally subject to taxation, he shall, if such lands were sold to individuals, issue his warrant on the treasury, in favor of the purchasers, or their legal representatives, for the amount paid by them for the same; and if they were sold to the state, he shall cancel such sale; and such lands shall be considered in the same light, and charged with the same taxes, as if no such sale had taken place.

SEC. 41. The clerk of the commissioners' court shall be allowed such compensation for services to be rendered, as

*Sheriffs compensation*

*Treasurer's compensation*

*Clerk's duty relative to county orders*

*Lands sold by mistake how to proceed*

## REVENUE.

by him under this act, as said court shall deem just, to be paid out of the county treasury.

**Liability of clerks** SEC. 42. If the clerk of the commissioners' court of any county, shall fail to receive from the auditor, on or before the first day of April next, the map and book provided for by this act, it shall be lawful for the county treasurer to proceed to take lists of taxable property without the transcript herein provided for.

**Acts repealed**

SEC. 43. The act entitled "An act for levying and collecting a tax on land and other property," approved February 18, 1823; all acts repealed by said act; the act to amend "An act entitled an act for levying and collecting a tax on land and other property," the act establishing the form of deeds to be executed by the auditor of public accounts, for the sale of lands for taxes, and for other purposes, approved January 26, 1826; the act relating to the revenue of Calhoun, Pike, Adams, Schuyler, Fulton, and Peoria counties, approved January 27, 1826, and the eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth sections of the act, approved January 28, 1826, entitled "An act supplemental to an act making appropriations for the years 1825 and 1826," approved January 18, 1825, are hereby repealed; but no forfeitures incurred, or rights accrued, under any of the laws hereby repealed, shall be affected by such repeal. This act to take effect on the first day of March next. [Approved Feb. 19, 1827.]

## REVENUE.

**In force Feb. 10, 1827**

*AN ACT to complete the assessment and collection of the land tax of 1826, and for other purposes.*

**Lands not assessed for 1826**

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That all persons, residents of this state, whose lands were omitted to be assessed, and on which taxes remain due and unpaid for the year 1826, shall be allowed to complete the assessment of the said lands, with the sheriff of the proper county, and pay the taxes thereon at any time before the first day of July next.

**How tested**

SEC. 2. All persons wishing to avail themselves of the provisions of this act, may, at any time before the day limited in the first section of this act, deliver to the sheriff, as full and complete a description of the land as is now required to be given, to the assessor, on which the tax has not been paid, as aforesaid, whose duty it shall be

to receive and transcribe the same, in a book to be kept by him for that purpose, together with the name of the owner, and receive the taxes due thereon, and give his receipt for the same.

SEC. 3. It shall be the duty of the several sheriffs to account and settle with the auditor of public accounts, for all moneys received by them, under the provisions of this act, on or before the first day of August, 1827, and furnish the said auditor with a full copy of the list of lands on which the said taxes have been paid as aforesaid, on such settlement, and a like copy of the same to the clerk of the commissioners' court: *Provided*, that all lands which may have been advertised and sold for the tax of 1826, at the time this act takes effect, shall not be embraced in the foregoing provisions.

SEC. 4. The sheriffs of the respective counties of this state, are hereby authorized and required to collect all taxes due to the county or state, for the years 1824, 1825, and 1826, and pay them over as directed by law, on or before the first of August next, and on payment of said taxes, the said sheriffs shall be released from all penalties accruing to the state or county. This act to take effect from its passage.

[Approved Feb. 10, 1827.]

## REVENUE.

*AN ACT for the relief of certain persons whose lands have been sold for taxes.*

In force Feb.  
13, 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That in all cases where the taxes on any tract of land have been paid to the sheriff of any county, and the same land has been subsequently sold by the auditor of public accounts, for said taxes, by reason of the said lands not being correctly described, in the tax book of the county, or by reason of any official mistake; in every such case, the auditor shall, upon its being made manifest to him that the said taxes have been paid in such county, and the land was nevertheless sold afterwards by the said auditor to an individual for the same taxes, to make an entry thereof in his books, giving a brief history of the case, and issue his warrant on the treasury in favor of the purchaser of any such land, when required, for the amount it was sold for: Provided, that*

Auditor to pre-  
serve evidence  
of sale of cer-  
tain lands, &c.

application be made therefor, before the expiration of the time allowed by law for the redemption of the same.

**State lands how redeemed** SEC. 2. In all cases where land may have been stricken off to the state, for the non-payment of taxes, the same may be redeemed at any time, by the payment of single tax for each year in arrears, together with all costs, and interest at the rate of six per cent. per annum, from the time such tax became due, until paid.

[Approved, Feb. 13, 1827.]

## ROADS.

In force March 1, 1827

### *AN ACT concerning Public Roads.*

Roads heretofore laid out declared public highways

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all roads within this state which have been laid out in pursuance of any law of this state, or of the late territory of Illinois, and which have not been vacated in pursuance of law, are hereby declared to be public highways.*

Power of county com'rs

SEC. 2. The county commissioners' courts of the several counties, shall have and are hereby vested with general superintendence over the public roads within their respective counties.

Shall establish road districts and appoint supervisors

SEC. 3. The county commissioners of each county, shall, at their March term, or so soon thereafter as may be, in each and every year, lay out and divide their respective counties into such road districts as they shall deem convenient and proper, defining accurately the boundaries of said districts, and all the roads therein; and they shall appoint one supervisor in each district, who shall serve one year, and until his successor be appointed.

who shall be notified of their appointment

SEC. 4. It shall be the duty of the clerk of the county commissioners' court in each county, to make out and deliver to the sheriff, written notices to all the persons who have been appointed supervisors, as aforesaid, within ten days after such appointments shall have been made, informing such persons of their said appointment, and describing the bounds of their respective districts; and the said sheriffs shall immediately deliver the said notices to the persons to whom they shall be directed, respectively; and if any person to whom such notice shall be so delivered, shall refuse to accept the office of supervisor, the sheriff shall return the said written notice to the county clerk, noting such refusal on the back thereof. But if the person to whom such notice of appointment shall be

refusal to accept

so delivered, shall agree to accept the same, then the sheriff shall notify the said clerk of such acceptance; and the said sheriff shall, in all cases, make the aforesaid returns of acceptance or refusal, within twenty days after the delivery to him of such notices, by the clerk. For any failure on the part of the clerk to make out and deliver to the sheriff any of the notices required by this section, the clerk shall be fined in the sum of ten dollars; and the sheriff shall incur the same penalty for any failure to deliver any one of said notices, in the manner and within the period herein prescribed.

SEC. 5. When any person shall refuse to accept the appointment of supervisor, he shall be fined five dollars, to be appropriated to road purposes: and when any supervisor shall die, or be removed, the county commissioners shall appoint another supervisor for that district, at their next regular or special meeting.

SEC. 6. It shall be the duty of each supervisor to cause all the public roads within his district to be kept well cleared, smooth, and in good repair, causing all stumps to be cut low, so as to afford at all times a free and safe passage to waggons and other carriages along such road; to cause bridges and causeways to be made whenever the same shall be necessary, and to keep the same in repair; and to cause to be erected and kept in repair at the fork or crossing place of every public road, a post with plain inscriptions thereon in large letters and figures, giving the direction and distance to the most noted place to which such road may lead.

SEC. 7. In consideration of the duties required of supervisors, they shall be exempted, during their continuance in office, from militia duty, and from serving as grand or petit jurors; but they shall receive no other compensation: *Provided*, the said supervisor may direct any person liable to work on the roads within his district to warn all or any part of the hands in his said district; and the time any such person may be thus employed, shall be computed as part of the time that such person was liable to work on roads.

SEC. 8. Each supervisor, shall be, and he is hereby authorized to call upon every able bodied male person residing within his district between the ages of eighteen and fifty years, to perform the necessary labor upon the roads and bridges, to make or keep them in repair, giving every such person three days notice of the time and place of working; and every such person who when required by the supervisor of his district, shall fail to attend at the time and place appointed by the supervisor, with such tools as he may

Penalty there-  
for

Duty of super-  
visor

Their exemp-  
tions

May depute  
persons to warn  
hands

Who shall  
work on roads

have been directed to bring, or who shall refuse to work when there, or shall disobey an order of the supervisor, shall forfeit and pay, for each offence, and for each day's absence of himself or his substitute, seventy-five cents, to be paid by himself if of full age, if a minor by his parent or guardian, or if an apprentice or other person bound to labor, by his master or mistress; to be recovered by the supervisor, before any justice of the peace: and in all actions brought by any supervisor under the authority of this act, such supervisor shall be a competent witness: *Provided*, that no person shall be bound to work on the public road more than five days in the year, or more than eight hours in any one day; nor shall less than eight hours labor be considered a day's work; and any person shall be exempt from labor, on furnishing a substitute equally able as himself to perform his work; but the principal shall pay all fines which such substitute may incur by refusing to work, or disobeying the orders of the supervisor: *Provided further*, when any person shall own or have in his or her service any slave or slaves, indentured or registered servants, it shall be sufficient to give the notice aforesaid to the master or mistress.

Obstructions to  
be removed  
how

SEC. 9. When any public road shall be obstructed by fallen timber, or in any other manner, and when any bridge or causeway shall be destroyed, or become impassable or dangerous to travellers, it shall be the duty of the supervisor to cause such obstruction to be removed, and to have such bridge or causeway rebuilt or repaired, as the case may require; and for that purpose he shall call out the persons bound to labor on the roads in his district, or as many of them as may be necessary: but if the persons bound to perform such labor in his district, shall have previously performed their five days' labor; or if the labor due from such persons shall not be sufficient, he shall then proceed to hire as many laborers or teams as may be necessary to remove such obstruction or repair such damage: *Provided*, the cost shall not exceed ten dollars: and if the cost of such work shall be estimated by said supervisor to exceed ten dollars, then he shall report such obstruction or damage to any two or more of the county commissioners, whose duty it shall be, immediately, to cause such obstruction to be removed, or such bridge or causeway to be rebuilt or repaired, as the case may be, either by ordering the supervisor to hire laborers and teams, for that purpose, or by making a contract with some fit person or persons, as they may deem best; and all moneys required to carry any of the provisions of this

section into effect, shall be paid out of the county treasury.

SEC. 10. If any person shall obstruct any public road by falling a tree or trees across the same by encroaching upon, or fencing up the same, or by placing any other obstruction therein, he shall forfeit for every such offence, the sum of ten dollars; and the sum of three dollars for every day he shall suffer such obstruction to remain after he shall have been ordered to remove the same by any supervisor, county commissioner, or justice of the peace. And if any person shall purposely destroy or injure any bridge or causeway, or remove any of the timber or planks thereof, or destroy or deface any guide board, or guide posts on a public road, or dig any drain or ditch across a public road; such person so offending, shall be liable to be indicted, and on conviction, shall be fined in any sum not less than five dollars, nor more than one hundred dollars: *Provided however*, that this section shall not be construed to extend to any person who shall lawfully cut down any timber for rails, firewood, or other purpose, and who shall immediately remove the same out of the road, nor to any person through whose land a road shall run, who shall dig a ditch or drain across said road, if such person shall immediately build a bridge across such ditch or drain, and keep the same in good repair.

SEC. 11. For the purpose of making bridges and causeways, or repairing the same, and for making and repairing public roads, the supervisors are authorized to take and cut any timber from any unimproved land through which such road shall pass.

SEC. 12. The county commissioners are hereby authorized to cause new public roads to be located and made out within their respective counties, and to alter or vacate public roads within their counties, except state roads. All roads when ordered to be opened, shall not be less than thirty, nor more than fifty feet wide; but bridges need not exceed sixteen feet in width.

SEC. 13. No new road shall be opened by order of the county commissioners' court, unless the same shall be applied for, by at least thirty-five voters, except in counties which shall not have more than three hundred voters, where only fifteen shall be required; such applicants shall deposite in the hands of the clerk of the county commissioners' court, a sufficient sum of money to pay the viewers. If their report be in favor of establishing the road, the money so deposited shall be returned to the persons who deposited the same; but if the report be unfavorable, the expense of the view shall be paid out of the money so

Forfeiture for  
obstructing, &c

Proviso

Timber &c for  
roads

Roads how laid  
out

Application for  
new road

deposited. And every person applying for such new road, shall contribute one day's labor, in addition to the five days required by this act towards making such road. The clerk of the county commissioners' court shall furnish each of the supervisors through whose road districts such new road shall pass, with a list of the persons who petitioned for the same; and any such petitioner who shall not reside within some district through which such new road shall pass, shall be required to perform the day's labor herein required of him, under the direction of the supervisor of the nearest road district, and for failing to do so, after being duly notified, he shall be fined as provided in the eighth section of this act.

Viewers to be appointed

SEC. 14. When a new road shall be applied for as aforesaid, the county commissioners' court shall appoint three suitable persons to view the ground proposed for the same; and if after such view, the viewers shall believe the road applied for to be necessary, they shall proceed to locate the same upon the nearest and best route designating its course through prairies and improved land, by fixing stakes in the ground; and through timbered land, by marking the trees, and make report thereof to the next county commissioners' court: but if after the view, they shall deem such road unnecessary or improper to be made, they shall report their opinion to that effect at the next term of the said court.

Useless roads how vacated

SEC. 15. Whenever it shall be represented to the county commissioners' court by the petition of thirty-five voters, that a public road, established by the said court, or any part thereof is useless or burthensome, and ought to be vacated; the said court, upon a sufficient sum of money being deposited with the clerk to pay the expense of a review, (such money to be returned, if the road shall be declared useless) shall appoint three suitable persons to view the same, who shall report to the said court, at the next term after such appointment, whether such road be in their opinion useless or burthensome, together with the reasons for such opinion; and the county commissioners may then order such road to be vacated, if in their discretion they shall deem such order proper: *Provided*, that no petition praying for the establishment or vacation of a public road, shall be received by the said court, unless the said petitioners, or some of them, shall have given at least twenty days public notice of such application, by a written advertisement posted on the outside of the door, of either the court house or county clerk's office of the proper county.

SEC. 16. When a new road shall be located, the coun-

ty commissioners shall immediately cause the supervisor <sup>Supervisor to be notified of</sup> of each district, through which such road shall pass, to be <sup>new roads</sup> notified of such location; and it shall be the duty of the said supervisors to make such roads within their respective districts and to keep the same in repair, so far as the labor of the persons bound to work on said road shall enable him; and if such labor be insufficient, the county commissioners shall cause such road to be cut out and opened at the expense of the county; and after being so opened, the same shall be kept in repair by the supervisor, as in other cases.

SEC. 17. Any supervisor who shall neglect or refuse to perform faithfully any duty or duties required of him by this act, shall be liable to be indicted; and on conviction, shall be fined not less than three, nor more than twenty dollars, for every such offence. The county commissioners shall have power, at any time to remove from office, any supervisor who shall fail or refuse to perform his duty: but such removal shall not excuse such supervisor from being punished by fine as aforesaid, for any breach or omission of duty, which may have occurred before such removal.

SEC. 18. Where any public road, which has been, or hereafter may be established, shall be oppressive or injurious to the owner of any land through which the same may pass, it shall be the duty of the county commissioners' court, upon complaint of the person aggrieved, to cause that part of the road so complained of, to be again viewed by three disinterested persons; upon whose report the said court shall cause that part of the road so complained of, to be located upon other ground, if the same can be done, without disadvantage to the public. The county commissioners' court shall have power to make a reasonable allowance to viewers of roads, but the same shall not exceed seventy-five cents a day to each viewer.

SEC. 19. The supervisor is authorized to contract with any person or persons to discharge his, or their road labor, or any part thereof, by opening, improving or repairing a road, or part of a road, or by building a bridge, or a causeway, or by furnishing materials for the same, or by erecting guide posts, and making guide boards. He is also empowered to receive in lieu of any portion of the labor required by this act, the use of such teams, carriages, road scrapers, and ploughs, as may be necessary, on such terms as he shall deem reasonable.

SEC. 20. The county commissioners shall have power, whenever the situation of the county treasury will permit, and the condition of the roads shall require it, to pur- <sup>Road scrapers may be pur- chased</sup>

chase a suitable number of road scrapers, to be used in raising and draining public roads within the county.

**Cart roads**

SEC. 21. If any person or persons shall, for the convenience of themselves or neighbors, wish to have a cart road laid out from the dwelling or plantation of any person, or from or to the highway or public road, or from one highway to another, the person so applying, shall advertise his intention, and obtain a petition as required by this act in the case of public roads; and upon reading the petition as aforesaid, which petition shall not contain less than fifteen signers, the court shall direct a view of the same; and upon return made, if there are no objections, the court shall further direct the same to be laid out in a proper manner, but the breadth thereof shall not exceed thirty feet. The said road shall be opened and kept in repair by the persons applying for the same: *Provided*, if any person shall be injured by the running of the said road or cartway, through his or her improved land, the same shall be made known to the county commissioners' court at their next court thereafter; and unless the party praying for the opening of said road or cartway, shall pay to him or her complaining of the same, the amount of damage done to his or her lands by the running of said cart road, to be ascertained by three freeholders appointed by the court; the said road shall not be so opened. If any owner or owners, of any land, through which said cart road may pass, shall be desirous of improving his or her lands, they shall be permitted to alter and change said cart road: *Provided*, the ground on which they propose to turn it, is as good, and shall not increase the distance more than one twentieth part thereof.

**Fines how recovered**

SEC. 22. All fines imposed by this act which are not otherwise expressly provided for herein, may be recovered by action of debt, before any justice of the peace of the county, in the name of the county commissioners, for the use of the county.

**Acts repealed**

SEC. 23. All laws heretofore enacted on this subject are hereby repealed: *Provided*, that the rights which have accrued, or penalties incurred under the laws by this act repealed, shall not be impaired or affected by the passage of this act; but the same shall be enforced according to the laws in force at the time the right accrued or penalty was incurred. This act to take effect and be in force on the first day of March next.

[*Become a Law Feb. 12, 1827.*]

*AN ACT* declaring a certain road therein mentioned, a State <sup>In force Feb.</sup> <sub>12, 1827</sub> Road, and for other purposes.

SEC. 1. *Be it enacted by the People of the State of Illinois* represented in the General Assembly, That the road leading <sup>Certain roads</sup> from the town of Mount Vernon, in Jefferson county, to <sup>declared a high</sup> the town of Carlyle, in Clinton county, be, and the same <sup>way</sup> is hereby declared a public highway of this state.

SEC. 2. The county commissioners' court of Clinton county is hereby authorized to appoint two commissioners, to review that part of the state road leading from Vandalia to Kaskaskia, which passes through the said county of Clinton: said commissioners when appointed, shall make such alterations in said road as to them shall seem most advantageous to said county, and not injurious to the state.

SEC. 3. The road leading from Equality, the seat of justice of Gallatin county, by John Black's and Josiah L. Potts' to Ford's ferry, on the Ohio river, is hereby established and declared a state road, and the county commissioners of said county shall cause said road to be kept in repair as other public roads of said county.

SEC. 4. The road leading from Carlyle in Clinton county, through Bond county to Sangamon county, be and the same is hereby declared a public highway.

SEC. 5. The road laid off and opened from Springfield to the town of Peoria, by the way of Samuel Musicks on Salt creek, and Thomas Dillon's, on Mackinaw creek, be, and the same is hereby declared a state road; and it shall be worked upon and kept in repair as other state roads are.

Road from Equality declared a highway

Road from Springfield a highway

[Approved, Feb. 12, 1827.]

## QUO WARRANTO.

*AN ACT* to regulate proceedings upon Information in the <sup>In force Dec.</sup> <sub>28, 1826</sub> nature of a Quo Warranto.

SEC. 1. *Be it enacted by the People of the State of Illinois*, represented in the General Assembly, That in case any person or persons shall usurp, intrude into, or unlawfully hold or execute any office or franchise, it shall and may be lawful for the attorney general, or the circuit attorney of the proper circuit, with the leave of any circuit court, to exhibit to such court, one or more information or informations, in the nature of a quo warranto, at the relation of any person

When and where an information in nature of a quo warranto may be exhibited

## QUO WARRANTO.

or persons desiring to sue or prosecute the same, who shall be mentioned in such information or informations, as the relator or relators against such person or persons so usurping, intruding into or unlawfully holding or executing any such office or franchise, and to proceed therein, in such manner as is usual in cases of informations in the nature of *quo warranto*. If it shall appear to such court, that the several rights of divers persons to the same office or franchise, may properly be determined on one information, it shall and may be lawful for the said courts to give leave to exhibit one such information against several persons, in order to try their respective rights to such office or franchise; and such person or persons against whom such information or informations in the nature of a *quo warranto*, shall be sued or prosecuted, shall appear and plead, as of the same term in which the said information or informations, shall be filed, unless the court shall give further time to such person or persons, against whom such information or informations shall be exhibited, to plead: such person or persons who shall sue or prosecute such information or informations, shall proceed thereupon with the most convenient speed that may be; any law, usage or custom to the contrary thereof, notwithstanding.

**SEC. 2.** In case any person or persons against whom any such information, in the nature of a *quo warranto*, shall in any of the said cases, be exhibited as aforesaid, shall be found, or adjudged guilty of any usurpation or intrusion into, or unlawfully holding and executing any office or franchise as aforesaid, it shall and may be lawful for the said courts, as well to give judgment of ouster against such person or persons, of and from any of the said offices or franchises, as to fine such person or persons, respectively, for his, or their usurping, intruding into, or unlawfully holding and executing any such office or franchise; and also to give judgment that the relator or relators in such information named, shall recover his, or their costs of such prosecution; and if judgment shall be given for the defendant or defendants in such information, he or they for whom such judgment shall be given, shall recover his, or their costs therein expended, against such relator or relators.

Judgment of  
ouster and fine

Costs

Time allowed  
to plead, reply,  
rejoin or de-  
murr

**SEC. 3.** It shall and may be lawful for the court in which any information as aforesaid, shall be exhibited, to allow to the relator or relators, and the defendant or defendants, such convenient time to plead, reply, rejoin, or demur, as to said court shall seem just and reasonable.

**SEC. 4.** Appeals may be taken from the decision of the circuit court, upon such terms as the said circuit court shall

prescribe; or writs of error may be prosecuted, whenever the supreme court or any of the judges thereof, in vacation, upon being presented with a copy of the record, shall certify that there is reasonable cause for the bringing of such writ: The said supreme court, or judge in vacation, may impose such terms and conditions upon the party wishing to prosecute such writ of error, as to the said court or judge may seem reasonable and just. The allowance of a writ of error shall operate, after notice thereof, as a stay of proceedings in the circuit court, until the determination. But writs of error without *seperse-deas* shall issue as writs of right, as in other cases.

[Approved, Dec. 28, 1826.]

## REPLEVIN.

### *AN ACT to regulate the Action of Replevin.*

In force June  
1, 1827

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the action of replevin shall be maintainable in all cases where any goods or chattels shall be taken from any person lawfully possessed of the same, without his or her consent, and the person or persons bringing such action shall, before any writ shall issue, make oath or affirmation before the clerk of the circuit court, or any justice of the peace of the county; that the property (describing it) about to be replevied, rightfully and *bona fide* belongs to him or them, and is unlawfully detained, and that the same was not taken in execution for the payment of debt, nor for the payment of taxes; and moreover before the execution of the writ, shall give bond to the sheriff, with good and sufficient security, in double the value of the property about to be replevied, conditioned that he or they will prosecute such suit to effect, and without delay, and make return of the property, if return thereof shall be awarded, and save and keep harmless the said sheriff in replevying such property; and the sheriff shall thereupon serve such writ, and deliver the property therein mentioned, to the party suing out such writ.

In what cases  
the action of  
replevin will lie

Oath of plff

and bond

SEC. 2. The proceedings in an action of replevin shall be commenced by *plaint*, with a summons to the defendant, in which shall be stated a description of the property to be replevied, and the sheriff shall return the bond by him taken, and return the same, with the writ, to the clerk; who shall file the same.

Commencement of the  
action by plaint  
and summons

Returno ha-  
bendo

and damages

Damages for  
plff

how assessed in  
either case

Condition of  
bond being  
broken, action  
may be main-  
tained therefor

Sheriff failing to  
take a bond  
shall pay dam-  
ages

Oath may be  
made by agent

Gen'l avowry -  
and conuzance  
in case of dis-  
tress for rent

SEC. 3. If any plaintiff in the action of replevin shall fail to prosecute his suit with effect, and without delay, or shall suffer a non-suit or discontinuance, or if the right of property shall be adjudged against him, the court shall give judgment for a return of the property taken, and damages for the use of the property from the time it was taken, until return thereof shall be made; and if judgment be given for the plaintiff, he shall recover damages for the detention of such property while in the possession of the defendant; and the damages in either case, shall be assessed by the jury in case of a trial; but if the plaintiff shall not prosecute his suit, or if judgment shall in any manner be given for the defendant, without a trial, the damages in such case may be assessed by the court, on hearing such testimony as may be offered on the subject.

SEC. 4. If at any time the condition of the bond required by the first section of this act shall be broken, the sheriff or plaintiff in the name of the sheriff to his own use as the case may be, may sue and maintain an action on such bond, for the recovery of such damages as may have been sustained in consequence of the breach of such condition.

SEC. 5. If any sheriff shall fail to take and return a bond, as required by the first section of this act, or shall return an insufficient bond, such sheriff shall pay to the party injured, all damages which he may sustain, or be put to, in consequence of such neglect; to be recovered by an action on the case, in the circuit court.

SEC. 6. The oath required in the first section, may be made by an agent of the plaintiff or claimant, in which case it shall be sufficient to state, on oath, that he has good reason to believe, and does verily believe, the right of property is in the plaintiff, and unlawfully withheld.

SEC. 7. It shall be sufficient for the defendant in all cases of replevin for distress taken for rent to avow, or make conuzance generally, without particularly setting forth the tenure or title to the lands whereon such distress was taken. This act to take effect on the first day of June next.

[Approved, Jan. 29, 1827.]

*AN ACT prescribing the mode of trying the Right of Prop- In force June 1  
erty.* 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That whenever an execution, or writ of attachment, shall be levied by any sheriff or coroner upon any personal property, and such property shall be claimed by any person or persons, other than the defendant, in such execution or attachment, by giving to the sheriff or coroner, notice, in writing, of his, her, or their claim and intention to prosecute the same, it shall be the duty of such sheriff, or coroner, forthwith to summon a jury of twelve respectable householders of the county, to meet at a place to be designated by him, before the day appointed for the sale of such property; and then and there proceed to inquire, by the oath of said jury, whether the right of such property be in such claimant, or not.

SEC. 2. It shall be the duty of such sheriff or coroner to notify the plaintiff in the execution or attachment of such claim, and the time and place of trial, and on the day appointed the sheriff or coroner shall swear the jury, and such witnesses as may be produced, by either party, or may postpone the trial, such reasonable time, on the application of either party, as he shall think proper, for the purpose of procuring testimony.

SEC. 3. After the jury shall have agreed on their verdict, the sheriff or coroner shall reduce the same to writing, and it shall be signed by all the jurors, and the sheriff or coroner, shall thereupon restore the property, if found to belong to the person or persons claiming, or shall proceed on such execution or attachment, if the property shall not be found to be in the claimant, in the same manner as if no claim had been made.

SEC. 4. The sheriff or coroner shall make up a bill of all the costs accruing on such trial, according to the provisions of the act or acts regulating the fees of officers, for similar services, and annex the same to the verdict of the jury; and shall have power to collect the same from the claimant of such property, if the verdict be against him, or from the plaintiff or plaintiffs in the execution, if such verdict be for the claimant, in the same manner that bills of fees in other cases are authorized by law to be collected.

SEC. 5. In case either party shall think himself or herself aggrieved by the verdict of the jury, he or she may appeal to the circuit court, in which case the party appealing shall give bond, with sufficient security, to prosecute such appeal without delay, and to pay all costs that have ac-

## RIGHT OF PROPERTY.

Judgment on appeal

crued or may accrue on such appeal, if judgment be given against him, in the circuit court; which bond shall be in a sum sufficient to cover all costs, and be payable to the opposite party; and the sheriff or coroner shall thereupon deliver to the clerk of the circuit court, the bond aforesaid, and all the papers relating to such trial; and the clerk shall enter said appeal on his docket; and the court shall proceed to try the right to such property, in the same manner as is before directed in this act: and in all such cases, judgment shall be given against the party failing, for all costs, and the clerk shall issue execution for the same.

Trial before justice of the peace

SEC. 6. In all cases where any personal property shall be taken by virtue of an execution or attachment, issued by any justice of the peace, and be claimed as aforesaid, the same proceedings shall be had before the constable serving such execution or attachment, together with the justice who issued the process; and in such cases the justice shall administer the oaths to the jury and witnesses, and retain the papers relating to the proceedings, and in case of an appeal, shall take the bond, and transmit the same, with the other papers, to the clerk as aforesaid.

Verdict of jury an indemnity to sheriff

SEC. 7. The verdict of the jury in all cases under this act, shall be a complete indemnity to the sheriff or other officer, in proceeding to sell, or restore any such property according to the verdict; and in case of an appeal, the sheriff or other officer shall retain such property, unless the party claiming, or the defendant in the execution, shall enter into a bond, with sufficient security, for the delivery of such property to the sheriff or other officer, if the judgment of the court shall be against the claimant.

Acts repealed

SEC. 8. The act entitled "An act prescribing the mode of trying the right of property in certain cases," approved February 12, 1821; the act entitled "An act prescribing the mode of trying the right of property in certain cases," approved February 7, 1823; and the act entitled "An act to amend an act prescribing the mode of trying the right of property in certain cases, approved February 7, 1823," approved January 10, 1825, are hereby repealed. No rights which have accrued under the acts hereby repealed, shall be impaired by this act. This act to take effect on the first day of June next.

[Approved, Jan. 29, 1827.]

*AN ACT concerning the Saline Reserves, a Penitentiary, and the improvement of certain Navigable Streams.* In force Feb. 15, 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That in case the congress of the United States shall give their consent to a sale by this state, of such situations in the Gallatin county Saline reserve as are suitable for water works, or such other portions of said Saline reserve or of the Vermilion Saline reserve, as this state shall deem expedient, Leonard White, John Black, and Benjamin Cummins, are hereby appointed commissioners, to select and designate such portions of the Gallatin county Saline reserve, not exceeding thirty thousand acres, congress having assented to the sale of that quantity, the selection to be of the lands least useful for salt making, within said reserve, and to lay off and designate at each situation suitable for water works, within said reserve, twelve acres of land, including such situation, and so much of the ripple and water course, and the banks thereof, as may be necessary for the erection of dams and water works, to be constructed in such manner as to promote (not obstructing) the navigation of the Saline creek. And it shall be the duty of said commissioners, as soon as practicable, after they shall be informed that the Congress of the United States has granted their assent as aforesaid, to perform the duties assigned by this section: the selection for water works to be in addition to said thirty thousand acres.*

SEC. 2. *In selecting the situations for water works, as aforesaid, said commissioners shall not be governed by any legal subdivision or survey heretofore made; but shall cause new surveys to be made, to include such situations, by special courses and boundaries to be by them established; and the other lands authorized by this act to be selected, shall be selected in sections, half sections, quarter sections, and half quarter sections, according to the surveys heretofore made under the authority of the United States; and having so selected the same, shall make a detailed report of their proceedings, designating particularly, the courses and boundaries of said twelve acre lots, and the intersections of the lines thereof, with the lines of the surveys heretofore made as aforesaid; and describing the other lands selected as the same are described on the plat of lands offered for sale by the United States, in the Shawneetown district, and transmit the same to the auditor of public accounts, who shall record the same in his office.*

SEC. 3. *Said commissioners, and the commissioners hereinafter appointed to select the lands in the Vermilion* Compensation of com're

Commissioners  
to select 30,000  
acres of land

and sites for  
water works

Water works

Report to the  
auditor

reserve, shall receive, as compensation for their services, out of the treasury of the state, two dollars per day, each, for every day by them employed in selecting said lands, for which the auditor shall issue his warrant on the treasury, upon the affidavit of said commissioners.

Com'rs to sell  
water works

SEC. 4. John Mc'Lean, James Frazier, and William Burnett, are hereby appointed commissioners to sell such of said lands, as shall be selected as aforesaid for water works, and to apply the proceeds thereof, and the funds hereinafter appropriated for the same purpose, to the improvement of the navigation of the Saline creek; and next to the improvement of the road across the maple swamp and between Equality, in Gallatin county, and Carlyle in Clinton county, on the road leading from Equality to St. Louis, and then to the erection of a bridge across Eagle creek, on the road leading from Equality to Ford's ferry, on the Ohio river. Which commissioners, immediately on receiving a descriptive list of said twelve acre lots for water works, from the auditor, shall proceed to sell the same, upon such terms as they shall deem most advantageous, having in view the improvement of the navigation of the Saline creek; and binding the purchaser or purchasers of said lots, in such conditions, as they shall deem necessary to effect the object. Said commissioners are vested with authority to disburse the money for the objects contemplated, in such manner as they shall deem right.

Purchaser  
bound to con-  
ditions

SEC. 5. The auditor shall, immediately on receiving and recording the report of the first named commissioners, transmit a copy thereof to the commissioners named in the preceding section, and also one copy to the commissioners appointed in the following section.

Copies of re-  
port

Com'r to give  
bond

SEC. 6. James Caldwell is hereby appointed commissioner, to sell all the aforesaid lands authorized to be sold by this act in the Gallatin county Saline reserve, except the lots for water works as aforesaid, who shall, before entering on the duties of his office, enter into bond, payable to the governor and his successors in office, for the use of the people of the state of Illinois, with security to be approved by the said governor, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties as commissioner, as directed by this act.

To advertise  
sale

SEC. 7. Immediately on being qualified as aforesaid, and receiving from the auditor a copy of said report, as aforesaid, the said commissioner shall cause said lands to be advertised for sale, in all the newspapers printed in this state, and in one newspaper printed in Nashville, Tennessee; one in Louisville, Kentucky, and in one newspaper printed in Cincinnati, Ohio, for twelve successive

weeks before the day of sale; stating particularly the day and place at which the sale will commence, that the same will be continued from day to day, until concluded, and stating also the hours of sale.

SEC. 8. In offering said lands for sale, the commissioner shall begin with the lowest number of township, range, and section, and so continue offering the lowest number, by half quarter sections, until all shall be offered, distinctly crying each half quarter section a reasonable time, when, if no person shall bid therefor, it shall be passed over and noted unsold; but should there be a bid for any tract of land offered, the said commissioner shall continue to have the same cried for a reasonable time after such bid, and shall then be struck off to the last and highest bidder, and set down to such bidder; but no tract shall be struck off at a lower price than one dollar per acre. Said sales shall be at public vendue, and shall be kept open each day from ten o'clock A. M. until two o'clock P. M. and shall be continued from day to day, every day, Sundays excepted, until the whole shall be offered for sale.

How lands  
shall be sold

SEC. 9. Said sales shall be for ready money, in gold or silver coins, or notes of any banks which shall be receivable into the land office at Shawneetown, at the time of payment; and said commissioner shall on the evening of each day's sale, and on the morning before the next day's sale shall commence, receive from the different purchasers, the sum or sums by them bid for the land, to them respectively set down, and give them a receipt for the same, together with a certificate of purchase, designating particularly the tract or tracts purchased, and the price, and shall make a record thereof in a book to be kept for that purpose. If any person shall neglect or refuse to pay for the land, by him bid off as aforesaid, in the time specified in this section, the same shall be again offered for sale, on the succeeding day, observing the same rules as aforesaid, until the same be sold, or set down unsold.

What money  
received

Certificates and  
payments

SEC. 10. Said commissioner, as soon as said public sale shall have been concluded, shall make out and transmit to the auditor of public accounts, a complete report of such sales, shewing to whom each separate tract was sold, and the price thereof; and the auditor shall immediately make out in the name of the governor, and the same shall be signed by the governor, the seal of state affixed by the secretary of state, and countersigned by the auditor, patents for the lands so sold; vesting in the purchaser or purchasers, respectively, the fee simple; and the auditor, after having made an entry of the date of the same, shall

Report of sales  
to the auditor

Patents

Semi-annual  
reports

deliver to each person entitled, his, her, or their patent, on the production and delivery to the auditor, of the certificate of purchase. And said commissioner shall at the end of every six months, during his continuance in office, transmit to the auditor a like report of sales, upon which the auditor shall in like manner, make out, have signed by the governor, the seal of state affixed, by him countersigned, an entry of the date thereof made, and on production of the certificate of purchase from the commissioner, shall deliver patents as aforesaid.

Private sales

SEC. 11. If after the conclusion of said public sales any land should remain unsold, the said commissioner may sell the same at private sale, by half quarter sections, at any price not less than one dollar per acre, and shall grant the purchaser a certificate of sale, as aforesaid.

Settlements

SEC. 12. The said commissioner shall, at the end of every six months, computing from the commencement of said public sales, during his continuance in office, settle and account with the auditor of public accounts, for all lands by him sold, and all moneys by him received, and shall pay into the treasury of the state one half of all the money by him received.

SEC. 13. Said commissioner shall keep his office at Equality in Gallatin county; and shall receive in full compensation for his services, four per centum upon all the money by him received and paid over under this act, to be paid out of the moneys so by him received.

Proceeds of  
sales how ap-  
propriated

SEC. 14. One half of the proceeds of the sales, to be made by the commissioner appointed by the sixth section of this act, are hereby appropriated for the erection of a Penitentiary; one fourth to improve the navigation of the Saline creek, in Gallatin county; the improvement of the road across the Maple swamp, and the erection of a bridge across Eagle creek; and one fourth part of the proceeds of said sales, to improve the navigation of the little Wabash river, by canalling round Robinson's mill dam, on the east side thereof, in White county, and to remove such other obstructions in said river, as shall be deemed expedient: *Provided*, that neither of the two last said appropriations, shall exceed five thousand dollars.

Semi-annual  
payments to be  
made

SEC. 15. The said commissioner shall, at the end of every six months, during his continuance in office computing from the commencement of said public sales, pay over to John Marshall of Shawneetown, or to such other person as the commissioners appointed by the fourth section of this act shall appoint to receive the same, the one fourth part of the proceeds of said sales, under the aforesaid limitation as to amount; and to William Wilson of White coun-

ty, or to such other person, as the commissioners appointed by the sixteenth section of this act, shall appoint to receive the same, the other fourth part of the proceeds of said sales under the limitation as to amount as aforesaid.

SEC. 16. George R. Logan, William Nevitt, Samuel Dagley, William M'Henry, and James Gray, are hereby appointed commissioners, with full power and authority to disburse the funds appropriated by this act, to improve the navigation of the Little Wabash, in the manner before prescribed, in such way as they shall consider most conducive to the public interest.

SEC. 17. The said John Marshall, or the person who shall be appointed to receive the money, for the improvement of the navigation of the Saline creek as aforesaid, shall before receiving any of said money, give bond, payable to the commissioners named in the fourth section of this act, and their successors in office, for the use of the people of the state of Illinois, in a sum, and with security to be named and approved by said commissioners, conditioned that he will faithfully pay over said money, and all such as shall come to his hands for that purpose, to the order of said commissioners and their successors in office, whenever they shall require it for the purpose aforesaid. And the said William Wilson, or person who shall be appointed to receive the funds appropriated for improving the navigation of the Little Wabash, shall, before receiving any of said funds, in like manner give bond and security to the commissioners named in the next preceding section, payable, conditioned for the use, and approved as aforesaid.

SEC. 18. Shadrach Bond, William P. M'Kee, and Ger-  
sham Jayne, are hereby appointed commissioners, with full power and authority to select and obtain by purchase or otherwise, for the state, a suitable site for a penitentiary, on the Mississippi river, at or near the town of Alton, in the county of Madison, taking care that the title shall be secure, with full power and authority, to cause to be erected thereon, with the funds for that purpose appropriated by this act, a building or buildings, of sufficient strength and durability, with cells for the convenient confinement of criminals, guard rooms, work shops, and rooms for the keeper or keepers; and in all things to arrange the same, upon the most advisable plan, both as to convenience and utility for a public penitentiary; with power to make all necessary contracts for the same; and for that purpose, said commissioners may, from time to time, as funds shall be wanted, and as the funds appropriated by this act, shall be received in the treasury, draw upon the auditor of public

Commissioners  
appointed to  
distribute the  
funds

John Marshall  
and William  
Wilson to give  
bond

Commissioners  
on the peniten-  
tiary

accounts for the same; and it shall be the duty of the auditor, at all times when there shall be such funds in the treasury, to issue his warrant or warrants on the treasury in favor of said commissioners, or in favor of such person, as they shall order and appoint, for the amount of all such drafts, and it shall be the duty of the treasurer to pay the same out of the funds aforesaid. It shall be the duty of the said commissioners to make a full and complete report of all their proceedings under this act, to the next general assembly, on the fifth day of their session, shewing precisely the state, nature and progress of the work, the amount of funds expended, and the probable cost of completion.

**SEC. 19.** The commissioners named in the fourth section of this act, shall have full power and authority to superintend the improvement of the navigation of the Saline creek, and to make all necessary contracts for that purpose, and for the construction of all necessary locks, as shall be necessary for that purpose, and to contract with the purchasers of sites for water works, or with other persons, as they shall find necessary and conducive to the interests of the state, for the taking care of, repairing and preserving such locks, and to fix and regulate such rates of toll for all boats, craft or vessels in passing said locks, as shall be necessary to keep, preserve and repair the same, subject to the regulation and control of the general assembly. And also to contract for and superintend the improvement of the road across the Maple swamp, and on the road between Equality and Carlyle, and the bridge over Eagle creek.

**SEC. 20.** The commissioners appointed by this act to superintend the improvement of the navigation of the Little Wabash, are in all respects, and for all purposes, vested with similar powers, as are conferred on the commissioners appointed to superintend the improvement of the navigation of the Saline creek, and such toll gatherer or gatherers, as they shall appoint for the purpose of keeping, preserving and repairing the same.

**SEC. 21.** Daniel W. Beckwith, Achilles Morgan, and Amos Williams, are hereby appointed commissioners to select and designate ten thousand acres, should congress assent to the sale of that quantity of the Vermilion saline reserve, who shall in all respects proceed in the manner, the commissioners appointed by the first section of this act, are required to proceed, except as respects the selection of situations for water works, and shall report their proceedings to the auditor in the same manner.

**SEC. 22.** William Reed is hereby appointed commissioner to sell all the land so selected and designated in the

**Auditor when to issue his warrant in their favor**

**Duty of commissioners under 4th section**

**Improvement of navigation of Little Wabash**

**Vermilion saline reserves**

Vermilion saline reserve as aforesaid; who shall give bond in the same manner, and in all respects, as near as may be, proceed to sell the same as the commissioner appointed by the sixth section of this act, is required to do, except that he shall receive in payment gold and silver coins, and such bank notes as shall be receivable in the land office at Palestine: and who shall make like semi-annual reports to the auditor, and payments into the treasury, and shall receive the same per centum on the amount of money by him received and paid over, as is allowed the commissioner named in the thirteenth section of this act, and paid in like manner, as compensation for his services, and shall keep his office at the seat of justice of Vermilion county.

SEC. 23. All the nett proceeds arising from the sales of land in the Vermilion saline reserve, under this act, are hereby appropriated to improve the navigation of the Great Wabash river, to be disbursed in conjunction with the state of Indiana, when she shall set apart and appropriate funds for that purpose, in such manner as the states of Illinois and Indiana shall, by mutual laws, direct; and which money is hereby solemnly appropriated or set apart for that object, and to be applied to none other.

SEC. 24. If any commissioner appointed under this act, shall refuse to serve, resign, remove out of this state, or die, the governor shall immediately fill such vacancy by appointing a suitable person, commissioner in his place. And the several commissioners who shall receive money under any of the provisions of this act, shall account for, and pay over the same money by them respectively received.

SEC. 25. In every instance where this act authorizes or requires any set of commissioners hereby appointed to perform any act or duty, it shall be sufficient if a majority of any such set of commissioners shall join in the performance or discharge of any such act or duty.

SEC. 26. The commissioners for improving the navigation of the Little Wabash, or any person by them authorized, may enter upon and take possession of any land in, or adjoining the said river, which may be necessary for improving the navigation thereof, and no more; which lands shall thereupon become a public highway; and the owner or owners of such land shall have the same remedy, and be entitled to the same compensation as is, or may be allowed for opening public roads over improved land. And that so soon as the sum of twenty thousand dollars be realized from the sale of said lands, the sum of one thousand dollars, out of the next avails of said sales,

Com's to sell  
Vermilion saline reserve

Navigation of  
Great Wabash

Vacancy of  
com's how filled

Majority of  
com's may act

May take pos-  
session of ne-  
cessary land

Fund for the improvement of Big Muddy

be and is hereby appropriated towards the improvement of Big Muddy river, five hundred of the same to be placed under the control of the county commissioners' court of Franklin county, and the other half under the control of the county commissioners' court of Jackson county, to be by them laid out and expended in the improvement of the navigation of said river, as high up as where the road leading from Shawneetown to Kaskaskia crosses the same; and the sum of two hundred dollars to build one bridge across Fox river, and one across Bonpass, in a direction from Mount Carmel, in Wabash, to Maysville, in Clay county.

Fox river

Bonpass

Lusk's creek

SEC. 27. The sum of six hundred dollars is hereby appropriated for the purpose of building a bridge across Lusk's creek in Pope county, within eighty poles of the junction of said creek with the Ohio river, to be disbursed under the direction of the county commissioners' court, and to be paid to their order, by the commissioner named in the sixth section of this act; one half of which to be paid out of the money hereby directed to be paid to William Wilson, or for the improvement of the Little Wabash; and the other half to be paid out of the money directed to be paid to John Marshall, and to be paid out of the first money coming to hand after the sum of two thousand dollars is received by the commissioner named in the sixth section of this act: *Provided*, this section shall not be construed so as to reduce the amount of appropriations allowed the Little Wabash and Saline creek.

Auditor shall keep a book

SEC. 28. The auditor shall procure well bound record books for the purpose only, and shall make a correct entry as specially as practicable, of the return of all sales made by the commissioners, and the certificates of purchase produced, the tract purchased, amount paid, purchasers name, date of purchase, and date of the patent issued and delivered, so as to make the evidence of title as clear and perfect as the nature of the case will admit.

[Approved Feb. 15, 1827.]

*AN ACT regulating the Gallatin County Saline.*

In force Feb.  
2, 1827

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That at the present session of the general assembly, there shall be elected by joint ballot, a person who shall be styled "The super-*

Intendent of the Gallatin county Saline," who shall reside upon the saline tract; the said superintendent shall execute a bond to the governor of the state of Illinois, and his successors in office, in the sum of eight thousand dollars, with security to be approved by the governor, conditioned for the faithful performance of the duties of his office. The superintendent shall be subject to removal or suspension, by the governor for the time being, for any palpable misconduct or omission of duty in his office, until the meeting of the general assembly next ensuing such misconduct or omission, and may be removed for the like causes by the general assembly. The superintendent, except for the causes aforesaid, shall hold his office four years, and shall receive a salary of five hundred state paper dollars per annum, payable yearly out of the state treasury: *Provided*, the said salary shall never exceed the nett profits of the rents of said saline, after paying all expenses.

Superintendent to be appointed and how removed

Sec. 2. The said superintendent shall have full power and authority, to take care of the property of the state, comprehended within, or situate upon the tract called the Gallatin county saline, whether the same be real or personal, and shall have the general supervision thereof, and shall be vested with all rights and powers necessary to protect and preserve the interests of the state accruing from, or arising out of the said saline.

His powers and duties

Sec. 3. The superintendent shall, within two months after the passage of this act, cause all the metal on the saline tract aforesaid, belonging to the state, to be collected, and shall advertise and sell the same so soon as practicable, for the highest price that can be had for the same, not less than three cents per pound, payable either in cash or good merchantable salt, well manufactured, delivered at the works in barrels at thirty-seven and a half cents per bushel, in four semi-annual instalments, the purchasers giving good and sufficient securities, payable to said superintendent, or his successors in office, for the use of the people of the state of Illinois. And in case any individual or individuals, who have received metal and owe for the same, be disposed to pay up and settle for the same in salt, it shall be lawful for said superintendent to take the amount due in salt, at thirty-seven and a half cents per bushel, put up and delivered at the lick as aforesaid, and may give them the same time to pay in as those who buy, four semi-annual payments, they giving bond and good security. Which salt, the superintendent shall sell on said saline tract, for the best price that can be had, not less than thirty-seven and a half cents per bushel for cash in hand.

Cause the metal to be sold

Execute leases,  
&c to Frazier  
and White

SEC. 4. The superintendent is authorized to execute leases to Andrew Frazier and Benjamin White, for their several places, or so much thereof, as may be necessary to carry on their several manufactories, and lay off to each of them a sufficiency of land, and fuel and building timber, sufficient to use the wells and springs now occupied by them, or such as they may hereafter acquire, and to include all their present improvements. And they, the said Andrew Frazier and Benjamin White, shall each give good security, in their leases, to be approved by the superintendent, for the faithful performance of all the stipulations therein contained; and they shall each pay two hundred and fifty dollars per annum, payable half yearly; the leases to expire on the fourth day of December, 1836; and should the said Andrew Frazier, or Benjamin White fail, or refuse to execute said lease or leases, within two months from the passage of this act, it shall be the duty of the superintendent to enter upon, and take possession of either, or both of said places, (as the case may be,) and advertise in some newspaper printed in this state, that he will lease such place or places, to the highest and best bidder, having in all cases, reference to the production of the greatest possible quantity of salt; and if any lessee shall fail to pay any rent within thirty days after the same shall become due, the superintendent shall have power, and it shall be his duty, immediately to dispossess said lessee or lessees, and proceed against them by action or otherwise, in the most summary and expeditious mode, to recover the rent due from them or any of them, and may proceed again to lease the premises for the unexpired time of the original lease.

To lease to L.  
Hay, &c.

SEC. 5. The superintendent is authorized to lease to Lowry Hay, the lot now in his possession, for five years, from the passage of this act, free of rent; and after that time, should the said Hay discover water of equal strength with that now used by White and Guard, he shall be chargeable with the same rent; and should the discovery be of an inferior quality, the superintendent may fix such rent as is reasonable and just, according to his discretion; the said Hay's lease to continue until the fourth day of December, 1836.

Lease vacant  
lots

SEC. 6. The superintendent may lease to any person or persons, any vacant place on said tract, for the purposes of manufacture or discovery, on the same terms as are before provided for Lowry Hay: in all such cases, the leases granted, are to expire on the fourth day of December, 1836; and the superintendent shall not grant to any person more than one lease, nor more than one lot in the same lease;

nor shall he in any case take another lessee or salt maker as security.

SEC. 7. The superintendent is authorized to enter upon any premises by him leased as aforesaid, to make distress for any rent due, or where any payment is about to become due, and the lessee has or is about to remove away, the said superintendent shall forcibly, and without delay, seize and take possession of all his works, salt, and any other personal property, and after advertising the same in four of the most public places for fifteen days, shall fairly expose and sell the same, or so much thereof, as will pay the rent due, or the payment about to become due, and all reasonable costs and charges; and for the purpose of carrying this provision into effect, the superintendent is hereby authorized and empowered, to summon to his aid as many persons as may be necessary to take and retain possession of any establishment, or other property of said lessee; and any person so summoned by said superintendent, failing or refusing to aid him, shall be fined by said superintendent, in any sum not less than five, nor more than twenty dollars; and said superintendent is hereby authorized and empowered to issue his execution to any constable of the county, and collect the same with costs, for the use of the state. And should any person or persons commit any waste, spoil, or trespass, on the vacant lands of the said saline tract, the superintendent is authorized to employ a sufficient force to expel such person or persons therefrom; and on complaint of any lessee and request to the said superintendent, he may employ the like force, and expel with strong hand, any person or persons trespassing on the tract, or any part thereof, so leased as aforesaid.

SEC. 8. It shall be the duty of the superintendent whenever any lease shall be taken by the authority of this act, to furnish the auditor with a true copy thereof, and to account with the auditor and pay over to the treasurer on the first Monday of December annually, all monies accruing to the state, from the said saline, whether by lease or otherwise; and shall further, on or before the tenth day of every regular session of the general assembly, make a full and complete report of all matters and things relating to the said saline.

SEC. 9. Andrew Frazier, shall within three months after taking his lease, erect, or cause to be erected and kept up, a ferry across Saline creek, at Island ripple, the rates to be fixed by the county commissioners; and when established, he shall in all respects be governed by the act regulating ferries. If he shall neglect or refuse to establish

May make distress for rent

To account with the auditor and report to the general assembly

Frazier to erect a ferry

## SCHOOLS.

one, the county commissioners may take possession of the place for the purpose, and erect one on application or otherwise.

**SEC. 10.** The superintendent may occupy the farm free of rent, on the lot lately occupied by Street and Lafferty; and he may be absent on business a reasonable time, leaving an agent to act for him at his own risk and expense.

**SEC. 11.** From and after the first day of August next, all salt sold by any lessee, or any other person selling at any of the works, shall be weighed in scales by standard weight.

**SEC. 12.** Timothy Guard, is hereby released from the excess of rent by him covenanted to be paid as lessee, of lot number two, of the Gallatin county saline, over and above five hundred dollars per annum. All laws inconsistent with this act are hereby repealed.

[Approved, Feb. 2, 1827.]

**Superintendent to occupy certain farm**

**T. Guard released**

**In force Feb. 17, 1827**

**Laws repealed**

**Settlement in two counties**

## SCHOOLS.

*AN ACT amending the act providing for the establishment of Free Schools, approved January 15, 1825, and for other purposes.*

**SEC. 1.** Be it enacted by the People of the State of Illinois represented in the General Assembly, That so much of the act entitled "An act providing for the establishment of free schools," approved January 15, 1825, as requires that all school districts shall contain not less than fifteen families, be and the same is hereby repealed.

**SEC. 2.** When any settlement shall be partly in one county and partly in another, it shall be lawful for the inhabitants of such settlement, to make application for a school district to the commissioners' courts of both counties; and if such district shall be granted, and a school kept according to the provisions of this act, and the act to which this is an amendment, the treasurer of such district shall draw from the county treasury of each of said counties, the proportion of school money due to that part of the school district, which shall lie in said county.

**SEC. 3.** The legal voters of any school district, at their regular meetings, shall have power in their discretion, to cause either the whole or one half of the sum required, to support a school in such district, to be raised by taxation. And if only one half be raised by taxation, the remainder may be required to be paid by parents, masters, and guar-

**Tax how levied**

dians, in proportion to the number of pupils which each of them shall send to such school.

SEC. 4. No person shall hereafter be taxed for the support of any free school in this state, unless by his or her own free will and consent, first had and obtained, in writing. And any person so agreeing and consenting, shall be taxed in the manner prescribed in the act to which this is an amendment. *Provided*, that no person shall be permitted to send any scholar or scholars to such school, unless such person shall have consented, as above, to be taxed for the support of such school, or by the permission of the trustees of said school: *And provided*, that all persons residing within the limits of a school district, shall, at all times, have the privilege of subscribing for the support and establishment of any such school.

SEC. 5. The rents and profits of any school lands within the boundaries of any township, are hereby assigned and appropriated, under the superintendence of the trustees, to the use and benefit of any school established therein; and if there be more than one school established in such township, then the rents and profits aforesaid shall be divided between them: *Provided*, that if the trustees of said township cannot agree in making a proper division of said rents and profits, then it shall be the duty of the county commissioners' court to make the apportionment thereof. But in either case a school established under this act, shall only receive so much of the rents and profits of the sixteenth section, as shall amount to their equal share, computing the whole number of the inhabitants of the township.

SEC. 6. The treasurer of each school district, shall receive any donation which may be offered by any person for the support of the school established in such district, either in money or any personal property; and where real estate is donated, the same shall be made to the trustees and their successors, for the benefit of the inhabitants of the school district, and the same shall be applied under the direction of the trustees; and any conveyance of real estate made under the direction of the qualified voters of the school district specially directed, shall be good and valid; the avails always to be used for the use of such school district. If any treasurer of a school district shall embezzle or misapply any such donation, or any money which shall come into his hands for the use of the district, he shall forfeit and pay to the trustees of the same, for the use of the district, to be recovered in any court having cognizance thereof, treble the amount of the money or property so embezzled or misapplied.

No person shall be taxed without his consent

Rents of school lands

Donations, and duty of treasurer

Conveyance of real estate

Misconduct of treasurer

School fund  
may be vested  
in warrants.

Acts repealed

SEC. 7. The commissioners of the school fund, are hereby authorized to purchase with the school fund now on hand, or which may hereafter come into their hands, state paper and auditor's warrants, on the best terms they can, and consolidate the warrants, if necessary, and secure the requisite evidence of claim on the treasury as they shall deem right. The proviso to the second section, all the eighteenth section, and such other parts of the act to which this is an amendment, as are inconsistent with, or repugnant to this act, are hereby repealed. This act shall take effect from its passage.

[Approved, Feb. 17, 1827.]

In force May 1,  
1827.

## SCHOOLS AND SCHOOL LANDS.

### *AN ACT relating to the School Lands.*

Trustees to be  
appointed

Term of ser-  
vice

Declared a bo-  
dy corporate

Oath

Their power  
and duties

To survey sec-  
tion 16

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That the county commissioners court, in each county, shall, at their June term next, or as soon thereafter as may be, appoint three trustees in each township where they deem it expedient, and where the population thereof will admit, to be called the trustees of the school lands; said court shall fill vacancies that may occur in said board of trustees; and said trustees, when appointed, shall hold their office for four years, and until their successors are appointed and qualified to office.

SEC. 2. Said trustees shall be a body politic and corporate, and may sue and be sued by the name and description aforesaid, in any court in this state. They shall, before entering upon the duties of their office, take an oath well and truly and faithfully to execute the duties of trustees of the school lands for said township, so far as relates to the sixteenth section thereof, according to law, agreeably to the best of their understanding; which oath shall be administered by some justice of the peace, and shall be endorsed on their certificate of appointment.

SEC. 3. Said trustees shall, within six months after their appointment, where the same has not heretofore been done, and where the said trustees may deem it expedient, shall survey, or cause to be surveyed, under their direction, section number sixteen, in said town, or such other lands as may have been selected in lieu thereof, or such parts thereof as they may deem expedient, into lots

of not less than forty nor more than one hundred and sixty acres, and make a plat of such survey, and return a copy thereof to the county commissioners' court of said county. Said trustees shall select such lot or lots of said section, or other lands selected in lieu thereof, as they may think proper to reserve from use, for the benefit of the timber, stone, or stone coal thereon, a certified copy of which shall be returned to the county commissioners' court, aforesaid, and kept for the inspection of all persons interested.

SEC. 4. The lot so selected, shall be preserved for the benefit of the timber, stone, and stone coal thereon; which timber, stone, or stone coal, shall not be used while there is a sufficiency on the lots leased, or that may hereafter be leased: *Provided*, that the trustees may, when necessary, permit the lessees to use the timber, stone, or stone coal, upon the lot or lots so selected as aforesaid.

SEC. 5. The trustees, or a majority of them, shall have power to lease any of said lots, except such as may be reserved as aforesaid, to any person or persons wishing to lease the same, for such term of time as they may think proper, not exceeding ten years, and upon such terms as they may think most conducive to the interest of the township: *Provided*, that said trustees shall advertise the leasing of such lands for at least four weeks, in four of the most public places of the township, previous to the making any lease; and said trustees shall lease said lands to the persons offering the best terms; and shall, or a majority of them, make and execute leases to the persons to whom they may let such lands: said leases shall be conditioned to use the lands in a husband-like manner; and not to commit or suffer waste thereon, and to pay said trustees, at the end of each year, the amount of money or rent agreed upon in said lease.

SEC. 6. If any lessee, his, her, or their heirs or assigns, or any other person or persons, shall cut down or destroy any more timber than may be necessary for the improvement and cultivation of the lot so leased; or shall do any damage to said leased premises, or commit any unnecessary waste thereon, or cut or take from off the same, any timber from the lot so reserved, without first obtaining the order of the trustees of such township; every such lessee, or person claiming under him, and all other persons offending, shall be liable to the said trustees in an action of damages; and every lessee violating the provisions of this act, upon conviction thereof shall forfeit his or her lease.

Timber how  
preserved

May lease for  
ten years

On the best  
terms

Lessees com-  
mitting waste  
liable to an ac-  
tion

## SCHOOLS AND SCHOOL LANDS.

Trustees to  
value improve-  
ments

May give per-  
mits

Bond required

Trustees may  
appoint a clerk  
and treasurer

Their duties

SEC. 7. The trustees of each township are hereby authorized and required, within three months after they shall be appointed and qualified to office, to value and appraise the improvements made by individuals, (the said individuals residing thereon,) where such appraisement has not already been made, upon section number sixteen, in their respective townships, or on lands reserved in lieu thereof; and the said trustees shall give such individual a certificate of the valuation and improvement, and a written permission, under the hands of such trustees, authorizing such individual to remain upon such improved land and cultivate the same, for such term of time not exceeding five years, as said trustees shall think reasonable, having regard to the valuation and appraisement as aforesaid, and taking into view the probable amount of the rents and profits to accrue, so that the same may be equal to such valuation and appraisement.

SEC. 8. No permission shall be granted to any one person so as to interfere with the improvement made by another, nor shall any such permission be granted until the person requiring the same, shall enter into bond with security to the trustees, and their successors in office, in the sum of three hundred dollars, conditioned that such person shall not commit any waste, or suffer any damages to be done the premises, and that such person will leave the premises, at the expiration of the term, in as good repair as the same was in when such permission was granted.

SEC. 9. When any township lies partly in one county and partly in another, or others, the business of said township, so far as relates to the school lands therein, shall be transacted under the discretion of the commissioners' court of the county which contains the greater portion of the school lands in said township.

SEC. 10. The said trustees shall have power whenever they deem it expedient, to appoint and discharge at pleasure, a clerk and treasurer. The clerk shall record the official proceedings of the said trustees, file and preserve such papers as they may direct, and furnish the treasurer, from time to time, with a statement of the debts and moneys which such treasurer may be authorized to receive. Such clerk shall, on the first day of the county commissioners' court, at their June term, annually, transmit a copy of the proceedings of said trustees, of the past year, to said court. The treasurer shall give bond, in such penalty as the trustees shall prescribe, with approved security, payable to them and their successors in office, conditioned that the said treasurer shall faithfully perform

the duties of his office, account for and pay over all moneys he may have in his possession, in pursuance of any order given by a majority of said trustees. It shall be the duty of said treasurer to receive all moneys due for rent, or in any other way accruing to the school fund of said township, to keep fair and regular accounts, and shall exhibit his books to a majority of said trustees, whenever they shall require the same.

SEC. 11. It shall be the duty of said trustees, as soon as they may deem it expedient, and the school funds of said township will admit thereof, proceed to lay off the township into school districts, having regard to the convenience of the inhabitants thereof, so that each district shall contain not less than eighteen scholars, subscribed or going to school; and the said trustees shall proportion the funds of said school lands, made by leasing the same according to the number of scholars that may be going to school in each district; which money shall be paid over by the treasurer of the school fund, by order of the trustees, to some person or persons appointed to receive the same, by the parents or guardians of the scholars subscribed, or going to school, in said district, and by them applied to the purpose of employing a school teacher: *Provided*, that no township shall be laid off into school districts, unless on the petition of a majority of the free-holders of said township.

SEC. 12. That if any person or persons shall hereafter trespass upon the school land, or sixteenth section, or other land selected in lieu thereof, appropriated for the purpose of education, by cutting down, destroying, or hauling from off the same, any timber, stone, or stone coal; every person so offending, shall forfeit and pay double the value of such timber, stone, or stone coal, to be recovered in the name of the trustees, before any court having competent jurisdiction thereof, or by indictment by the grand jury, before the circuit court of the county, and to be appropriated to the use of the township, for school purposes.

SEC. 13. When any township shall not contain twenty white inhabitants, the county commissioners' court of the county shall have power to manage and lease the school lands in such township, in the same manner, as it might be done by trustees. In all cases in which the county commissioners of any county have heretofore leased any school lands, in consequence of there not being a sufficient number of inhabitants within the township, such leases shall be deemed as legal and valid, as if the same were executed by trustees duly appointed.

SEC. 14. Upon the death or resignation of any trustee,

Trustees to lay off school districts

A teacher to be employed.

Trespassers, how punished

County com'rs. to take charge of school lands in certain cases

**Death or resignation of trustees** appointed under the provisions of this act, the survivor or survivors shall do and perform all the duties required of such trustees until successors be appointed.

**Compensation to trustees &c.** SEC. 15. The trustees, clerk, and treasurer, appointed under the provisions of this act, for their services performed, shall be allowed a reasonable compensation, paid out of the school fund of the township in which they reside, as the county commissioners' court may direct, or as the citizens of the township may otherwise provide for.

**Acts repealed** SEC. 16. An act relating to the lands reserved for the use of schools, approved March 2, 1819; the act providing for persons settled on the school lands, approved March 24, 1819, are hereby repealed: *Provided*, that all leases, surveys, and all other lawful acts, heretofore made by the trustees of the school lands in each township; and all trustees heretofore appointed that have discharged the duties of their office, shall continue in office for the term of time, for which they were appointed; and all rights acquired under the act hereby repealed, shall be of the same validity, and shall be settled in the same manner as though this act had not been passed. This act to take effect the first of May next.

[Approved Feb. 17, 1827.]

## SHERIFFS.

**In force Jan. 24, 1827**

### *AN ACT for the relief of Ex-Sheriffs.*

**Former sh'ffs allowed to collect taxes in arrears**

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all sheriffs who have heretofore been in office in this state, on entering into bond and security, in the manner now prescribed by law, for sheriffs, shall be authorized to collect all taxes in arrears, which accrued during the time they were sheriffs, and they are hereby required to pay over the same within nine months from the passage of this act, unless they have already accounted for the same; and they are further authorized to collect all costs of suits, and fees which are due and owing to them, or where the same shall be due and owing to any other person or persons, where such sheriff has either paid or become liable for the same, and account therefor, to the proper person, within nine months from the passage of this act.

**Ephraim Hubbard**

SEC. 2. Ephraim Hubbard, late territorial sheriff, is hereby authorized to collect the fee bills which were placed in his hands by Joseph M. Street, and for which

said Street has recovered judgment against said Hubbard; and said Hubbard, as well as the persons intended in the first section of this act, are hereby invested, with the same power to collect their several demands, as any sheriff now has.

[Approved, Jan. 24, 1827.]

## SHERIFFS AND CORONERS.

*AN ACT concerning Sheriffs and Coroners.*

In force June  
1, 1827.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That whenever any sheriff or coroner shall be elected for any county in this state, and return of the votes made to the secretary of state; the governor shall commission such sheriff or coroner to continue in office for two years, which commission shall be transmitted, by the secretary of state, to the clerk of the circuit court of the proper county; whose duty it shall be to give immediate notice to such sheriff or coroner, of the receipt of his commission.*

How sh'ffs and  
coroners shall  
be commission-  
ed

SEC. 2. Every sheriff or coroner elected as aforesaid, on receiving notice of his commission, shall, within thirty days thereafter, enter into a bond to the people of the state of Illinois, with good and sufficient security, to be approved of by the judge of the circuit court of his county, at the term next after the date of such bond, the sheriff in the penal sum of ten thousand dollars, and the coroner in the penal sum of two thousand dollars, conditioned for the faithful discharge of all the duties required or to be required of him by law, as sheriff or coroner, (as the case may be) and shall also, at the time of giving such bond, take and subscribe before the clerk of the circuit court, the several oaths required by law; and an oath for the faithful performance of the duties of his office: *Provided*, that if no circuit court be held within thirty days after notice of such commission, as aforesaid, the clerk may approve the bond required as aforesaid; which bond, in that case, shall be good and valid, until the end of the next succeeding circuit court.

They shall en-  
ter into bond

SEC. 3. The oaths so taken, and bond given by any sheriff or coroner as aforesaid, shall be filed and recorded by the clerk of the circuit court; and the taking and subscribing of the oaths, shall be certified by him on the back of the commission, and a certified copy of such bond, under the seal of the court, shall be evidence in all courts in this state.

and be qualified

Oaths and bond  
to be filed and  
recorded

## SHERIFFS AND CORONERS.

**SEC. 4.** If any sheriff or coroner, elected as aforesaid, shall neglect or refuse to enter into bond and take the oaths above required, within the time above specified, or if any bond approved by the clerk as aforesaid, shall be disapproved by the judge of the circuit court; and such sheriff or coroner shall not, during the term of the court, procure such security as the judge shall approve, in all such cases the office shall be deemed vacant; and the clerk shall immediately notify the governor of such vacancy; and it shall be the duty of the governor to issue a writ of election, and direct the time of holding the same; which election shall be proceeded in as other cases of election.

**SEC. 5.** It shall be the duty of every sheriff and coroner, when qualified as aforesaid, to execute and return all writs, warrants, process, orders, and decrees, of every description that shall or may be legally directed and delivered to him, within the limits of his county, under pain of contempt of the court from which such writ, warrant, process, order or decree may have issued; and for the service of such process, and for keeping the peace, such sheriff or coroner may call to his aid the power of the county, when necessary.

**SEC. 6.** The several sheriffs and coroners shall be conservators of the peace in their respective counties, and keep the same, by causing all offenders, on view, to be committed to prison, and to enter into recognizance to keep the peace, and appear at the next circuit court, and shall return all such recognizances to the next circuit court; and it shall also be the duty of all sheriffs and coroners to suppress all riots, routs, affrays, fightings, and all crimes, and breaches of the peace, and to do and perform all such other duties, as are, or may be required of them by law.

**SEC. 7.** It shall be the duty of the sheriff of each county, to attend all circuit courts, and courts of county commissioners, in his county, at the terms and sessions of such courts; and he shall have the custody and care of the court house and jail.

**SEC. 8.** It shall be the duty of the coroner, to take inquest of violent or casual deaths happening in his county, or where the body of any person coming to such death shall be found in his county; and shall make return of such inquest to the circuit court; also to serve all writs and process, when the sheriff shall be a party to the suit; or when it shall be made to appear by affidavit, filed with the clerk who issues the process, that the sheriff is interested in the suit, or related to either party; and in case of a vacancy in the office of sheriff, by death, resignation, removal, or otherwise, the coroner shall do and

Neglect to give bond, &c.

Office to be vacated, and

writ of election issue

Duty of sh'ffs and coroners

They shall be conservators of the peace

Sheriff to attend circuit court

Duty of coroner in relation to dead persons

When he shall act as sheriff

perform all the duties pertaining to the office of sheriff, receive the proper fees and emoluments, and be liable to the same penalties and proceedings, as if he were sheriff, until such vacancy shall be filled, by the election and qualification of a new sheriff: *Provided* nothing herein contained, shall prevent any sheriff whose term has expired, from continuing to perform the duties of the office, until his successor be qualified as is hereinafter provided.

SEC. 9. It shall be the duty of each and every sheriff in this state, to make a settlement with the county commissioners' court of his county, for the taxes and moneys by him collected, or due the county, at the December term of such court, annually; and he shall settle and account with the auditor of public accounts, for all taxes and public moneys due the state, as required by law. And if any person shall hereafter be elected sheriff of any county in this state, who has been sheriff of any county of the late territory of Illinois, or of this state, and who shall, at the time of his election, be in arrear to the state or county for taxes, or other public money, such person shall not be commissioned: and where any such former sheriff shall be elected, and shall not, within thirty days after his election, produce to the governor a *quietus* from the proper officer of his county, and from the auditor of public accounts, for all moneys or revenue with which he shall be, at the time, chargeable, or a certificate of his having tendered the amount, the governor shall order a new election, as in case of neglect to qualify, or refusal to serve.

SEC. 10. No sheriff or coroner shall become the purchaser, nor procure any other person to become the purchaser for him, of any property, real or personal, by him exposed to sale, by virtue of any execution or other process; and all such purchases made by any sheriff or coroner, or by any other person in his behalf, shall be absolutely null and void.

SEC. 11. It shall be lawful for any sheriff to appoint a deputy or deputies; which appointment shall be in writing, filed in the office of the clerk of the circuit court, and entered of record; and any deputy when so appointed, and having taken and subscribed the several oaths required to be taken by the sheriff, shall be, and is hereby authorized to perform any and all of the duties required of the sheriff in the name of the sheriff; and the sheriff shall be liable for any neglect or omission of the duties of his officer, when occasioned by any such deputy, in the same manner as for his own personal neglect or omission. And any bond or security taken by any sheriff from his deputy, to indemnify such sheriff, shall be good and available in law.

Shall settle for  
co revenue

for state reve-  
nue

and procure  
*quietus*

In default  
thereof the  
governor to or-  
der an election

Sh'ff & coroner  
not to be pur-  
chasers at sales

Appointme  
of deputies

Their duties

Their neglect  
or misconduct

## SHERIFFS AND CORONERS.

Sh'ffs to con-  
tinue until su-  
perseded

Notice of suc-  
cessor

Former sh'ff to  
deliver papers

court house and  
jail

Collections to  
be made by  
former sh'ffs

Neglect to pay  
over money  
collected

SEC. 12. Whenever the office of any sheriff shall have expired, by the constitutional term of two years, it shall be lawful for the same person, whether re-elected or not, and his deputy or deputies to continue to perform all the duties of sheriff, until his successor shall be commissioned and qualified, as is hereinbefore required. And whenever any sheriff shall go out of office, and his successor in office shall be qualified as aforesaid, the clerk of the circuit court shall issue a notice in writing, stating that the sheriff elect, has been commissioned and qualified according to law; which notice shall be served by the new sheriff, and the former sheriff shall thereupon transfer and deliver to the new sheriff, all the writs, process and papers belonging to his office except as is hereinafter excepted; and also the possession of the court house and jail of his county, and shall take from the new sheriff a receipt, specifying the papers so delivered over, and the prisoners in custody, if any; which receipt shall be sufficient indemnity to the person taking the same.

SEC. 13. Every sheriff going out of office, at the expiration of his term, and having any writ of *fieri facias*, or fee bill, which he may have levied, but not collected, or any tax list uncollected, shall be, and is hereby authorized to proceed on and collect such execution, fee bill or tax list, in the same manner, as if his term of office had not expired; and any sheriff who has heretofore, or who may hereafter pay and advance the taxes assessed against any person, may proceed to collect the amount of money, so paid and advanced, in the same manner, to his own use, as if no payment had been made.

SEC. 14. If any sheriff or coroner shall neglect or refuse, to pay over any money collected by virtue of any execution, process, or fee bill, to any person entitled to receive the same, or shall wilfully neglect the duty of his office, to the prejudice or injury of any person or persons, such person or persons may, on application to the court, where the bond of such sheriff or coroner is filed and recorded, and on sufficient cause being shewn, obtain leave to prosecute the bond of such sheriff or coroner; and the same proceedings shall be had thereon as in other cases of bonds for the performance of covenants; and after judgment had, any person injured, and who would be entitled to sue on said bond, on application as aforesaid, may obtain a writ of inquiry of damages on such judgment; and in every case when damages shall be assessed, execution shall be issued for the amount of such damages and costs, and collected for the use of the injured party; or upon the failure of any sheriff or coroner after demand

made to pay over any money by him collected, by virtue of any execution, process, or fee bill, to any person entitled to receive the same, such person may proceed against such sheriff or coroner, in a summary way, before the circuit court, by motion, upon giving to such officer ten days' notice of the application, and recover the amount so neglected to be paid, with ten per cent. damages thereon, for such detention, and shall have execution therefor: *Provided*, that in all such cases, if the sheriff shall pay or satisfy the amount claimed by the party prosecuting, with costs, under the direction of the court, before final judgment, or in any subsequent prosecution before inquest found, all further proceedings on such bond, or judgment, shall be stayed by the court.

SEC. 15. If any sheriff shall fail to settle with and pay over to the county commissioners' court, according to law, any money which he may have collected or received, belonging to such county, it shall be lawful for the county commissioners of such county to proceed against such sheriff, in a summary way, before the circuit court, by motion, upon giving such sheriff ten days' notice of such application, and recover the amount due such county, with ten per cent. damages thereon, for such neglect, and shall have execution therefor; or may proceed against such sheriff and his securities for such delinquency, upon his bond of office.

SEC. 16. If any sheriff shall fail or neglect to settle with the auditor of public accounts, according to law, and pay over all money due the state from such sheriff, it shall be the duty of the auditor to proceed against such sheriff, by motion, either in the supreme court or in the circuit court of the county where such sheriff shall reside, upon giving to such sheriff, if the motion be made in the supreme court, twenty days' notice of the application, or ten days' notice, if made in the circuit court: and recover judgment against such sheriff for the amount he may owe the state, with ten per cent. damages thereon, and have execution therefor: or may proceed in either court aforesaid, against such sheriff and his securities, upon his bond of office. This act repeals "An act defining the duties acts repealed of sheriffs and coroners of the state of Illinois," approved March 2, 1819, and all other acts and parts of acts repugnant to this act; but rights acquired, or forfeitures incurred under those acts, are not hereby affected. This act to take effect on the first day of June next.

Failure to settle with county com'rs.

Failure to settle with auditor.

[Approved, Feb. 12, 1827.]

In force Feb.  
15, 1827

Defaulters may  
renew their  
notes, &c.

Stay of execu-  
tion

Persons here-  
after making  
default

Sh'ffs & clerks  
to be allowed  
for fees

*AN ACT amending the act establishing the State Bank.*

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That from and after the passage of this act, it shall be lawful for any debtor to the state bank of Illinois, or either of its branches, when the debt is due by note or mortgage, and who has made default in the payment thereof, or the regular instalment or instalments, according to law; or against whom any judgment has been rendered, for any debt due the bank or branches, and has not paid the same, to pay the instalment or instalments that have fallen due, or may have fallen due at the time of applying for renewal, interest and all costs, and upon so doing, to renew his note or mortgage, in the manner now provided by law; and if judgment has been rendered, the competent officer shall enter satisfaction of such judgment, when the previous requisites of this act are complied with. Upon such renewal, competent security shall be taken, as heretofore.*

SEC. 2. *No execution shall issue upon any judgment in favor of the state bank of Illinois, against any debtor of said bank, within three months from the passage of this act.*

SEC. 3. *Hereafter, any bank debtor, who shall, at any time, make default in payment, may renew his note or mortgage, at any time before the same is collected upon execution, upon paying to the proper cashier, or his agents, the instalment or instalments, interests, commission and costs, that may be due at the time of such renewal; and upon such renewal, the competent officer shall return the execution, (if one shall have been issued,) satisfied; stating that it is satisfied by the renewal of the debt to the bank, by the defendant.*

SEC. 4. *It shall be the duty of the cashier of the principal bank and the cashiers of the branches thereof, respectively, on the application of any sheriff, clerk, or other officer, who may be indebted to the state bank, or either of its branches, and in whose favor fees have accrued, in suits instituted in behalf of said bank or its branches against individuals, to liquidate the same entirely, if such fees be sufficient to discharge the bank debts of such officer, and if not, to credit the amount of such fees on the note or notes of such officer as aforesaid; and in case any such officer shall not be indebted to the said bank or its branches, then it shall be the duty of the said cashiers to pay the fees of such officer; any law to the contrary notwithstanding.*

[Approved, Feb. 15, 1827.]

*AN ACT to amend the act establishing the State Bank of Illinois.* In force Feb. 13, 1827

SEC. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That the cashier of the state bank of Illinois, shall hereafter receive a salary of five hundred state paper dollars per annum, and no more; and the cashiers of the branch banks respectively, shall receive a salary each, of the sum of four hundred state paper dollars per annum, and no more. And the cashier of the branch at Shawneetown, Thomas L. Posey, shall, so soon as practicable, arrange and bring up the books with all possible care and accuracy, and for that purpose, may employ an assistant. Cashiers' salary

SEC. 2. Hereafter the said cashiers, respectively, shall not pay out any moneys for contingent expenses, until the same shall be allowed, and an appropriation made therefor by law; and if any cashier shall pay out any money contrary to the provisions of this act, he shall forfeit and pay double the amount so paid out by such cashier, to be recovered by action of debt, or on the case, in the name of the people of the state of Illinois, for the use of the state, in any court having jurisdiction thereof. And it shall be the duty of the attorney general or circuit attorney, of the proper circuit, upon the commission of such offence, to prosecute for the same. Contingent expenses

SEC. 3. Hereafter the president of the state bank of Illinois shall not receive any salary or compensation for his services, whatever. President's salary abolished

SEC. 4. If any cashier now in office, shall be succeeded in his office, he shall deliver over to such, his successor, all books, furniture, papers, property, state paper, or gold and silver, belonging to the bank of which he is cashier, under the penalty of double the amount of the value of such books, papers, furniture, property, state paper, or gold and silver, as he shall not deliver over to his successor, to be recovered by action of debt, or on the case, in the name of the people of the state of Illinois, to the use of the state, in any court having jurisdiction thereof; and the court rendering such judgment, shall imprison the defendant, until the penalty and costs are paid; and it shall be the duty of the attorney general or circuit attorney, of the proper circuit or district, to prosecute for the same, upon his own knowledge, or the information of others. Cashiers going out office to deliver books, &c

SEC. 5. All notes due any of the banks, under the sum of one hundred dollars, the cashier shall cause to be collected by some justice of the peace. Notes under \$100

SEC. 6. Hereafter it shall not be lawful for the cashier Deposites not allowed

## STATE RECORDER.

of the state bank, to receive money, state paper or funds of any kind, from individuals, on deposite for safe keeping or otherwise, other than the funds of the bank, school fund and state. And said cashier is hereby directed to give notice as soon as practicable in the Illinois Intelligencer, at Vandalia, to be continued for six weeks, to all persons having funds deposited in said bank to take the same away; and should the same be not taken out by the first day of December next, 1827, notice having been given as above stated, it is hereby declared and made known, that the state will not, in case the same be lost or destroyed, be accountable or forthcoming for the same.

**SEC. 7.** It shall be lawful for the cashier of the state bank of Illinois, or the cashiers of either of the branches of the said bank, and it is hereby made their duty, to purchase for the state, all real estate which may be offered for sale, to satisfy any judgment obtained by the state bank, which cannot be sold for the amount of such judgment, interest and costs: *Provided*, that in the opinion of the cashiers, the property so offered, shall not sell for two thirds of its value.

**SEC. 8.** It shall be lawful for the cashier of the state bank or the cashiers of either of the branches of said bank, within one year after such real estate may have been sold, to satisfy any judgment, in favor of said bank to redeem the same for the state: *Provided*, that such real estate shall not have sold for the amount of any such judgment, interest and costs, and that in the opinion of the cashiers, such property was not sold for two thirds of its value at such sale.

[Approved Feb. 13, 1827.]

## STATE RECORDER.

In force Feb.  
12, 1827

## AN ACT establishing a Recorder's Office for the State.

Recorder to be  
elected, &c.

**SEC. 1.** Be it enacted by the People of the State of Illinois represented in the General Assembly, That there shall be established a recorder's office for this state, to be kept at the seat of government.

**SEC. 2.** There shall be elected by the general assembly at its present session, a recorder to fill said office, who shall give bond and security for the faithful discharge of his duties, and take the like oath as is required by law in other cases of recorders.

**SEC. 3.** All the deeds and title papers of non-residents of this state, for lands lying in this state, may be recorded

in said office, and when so recorded, shall have the same force and effect as though said deeds or title papers were recorded in the county where the lands are situated. What deeds are recorded in his office

SEC. 4. Said recorder shall annually, on the first of October, make out an abstract for each county, of all deeds and title papers for lands recorded in his office, which may lie in said counties respectively, particularly describing therein the names of the parties, the date of such deeds, and the lands thereby conveyed; and shall transmit by mail or otherwise, the said abstracts to the recorders of each county, and if by mail, the state recorder shall pay the postage: *Provided*, that for such abstracts as aforesaid, said recorder shall receive no fee whatever, and the county recorders shall file the same in their offices for the benefit and inspection of all persons who may wish to examine the same. Abstracts to be made

SEC. 5. Said recorder shall procure a book, or books, suitable for said office, in the same manner, and shall be governed in all respects in the recording of deeds, and shall be subject to the like penalties, and shall receive the same fees as is provided by law for county recorders.

SEC. 6. Said state recorder is hereby authorized and required to obtain from the several recorders' offices in which deeds and title papers of military bounty lands in this state, have been or may be recorded, abstracts of said deeds and title papers, containing the names of the grantors and grantees, the date of the deed, the place where, and time when the same were executed; the time when, and county in which it is recorded; the number of the book and page containing the record; the description of the tract of land, and the name of the patentee, if the same is expressed in the deed or title paper. The aforesaid county recorders are hereby required to permit said state recorder, or any person employed by him, to have access to the records in their respective offices, for the purpose of making out abstracts as aforesaid; and ever afterwards, they shall once in three months make out and transmit by mail or otherwise, abstracts of all deeds and title papers of military bounty lands, recorded in their respective offices, which shall not have been previously obtained by the state recorder; for which service, said county recorders shall be entitled to receive from the state recorder the sum of six cents for each tract described in the abstracts transmitted by said county recorders. Said state recorder shall provide suitable books, in which he shall copy said abstracts, arranging them according to the situation of the lands, beginning with the lowest number of range, township, and section, commencing with the lands south of Abstracts from county recorders

## VANDALIA LOTS.

Recorder's fees  
for search

the base line, and ending with those east of the fourth principal meridian. He shall leave at the end of the abstracts belonging to each township, a sufficient number of blank pages to admit of abstracts of deeds and title papers to be hereafter recorded. When said books shall have been completed as aforesaid, the state recorder shall be entitled to receive from every person searching the same, twelve and a half cents for each tract sought for; and when the recorder shall make the search, he shall be entitled to receive from the person applying for the same, fifteen cents for each tract sought for. This act to take effect from and after its passage.

[Approved, Feb. 12, 1827.]

## VANDALIA LOTS.

In force March *AN ACT* for the relief of purchasers of town Lots in Vandalia.

Discount allowed

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all persons who have heretofore purchased any in-lot or out-lot in the town of Vandalia, shall be allowed a discount of fifty per cent. from the amount due from any such person, for any such lot or lots: *Provided*, such person shall, on or before the last day of October next, make full payment of the residue of any such debt; judgments against the state for Perryville lots, shall be receivable in payment, for lots in Vandalia, heretofore sold, or hereafter to be sold, but no discount shall be made on payments made in such judgments.

Where one  
tenth is paid  
may relinquish  
lots

Proviso

SEC. 2. Any person being the present owner of two or more lots, in the town of Vandalia, on each of which lots one tenth part, at least, of the purchase money has been paid, shall be permitted, at any time before the last day of October next, to relinquish to the state, one or more of said lots; and to have the payments which have been made on the lots so relinquished, applied to the payment of the debt due on the lot or lots retained: *Provided* such person shall, at the time of making such relinquishment, pay into the state treasury, whatever sum may then remain unpaid to the state, upon the lot or lots so retained. No discount shall be allowed, on payments made by relinquishment; but on any sum paid in cash to complete such payments, a discount of fifty per cent. shall be allowed.

SEC. 3. All in-lots and out-lots, in said town of Vandalia, which now belong to the state, and such as may hereafter be relinquished to the state, shall be re-valued under the direction of the auditor of public accounts, on the first Monday of May, annually, or as soon thereafter as may be, and at such other times as the said auditor shall deem necessary; and said auditor shall sell the same, at the price so fixed, for ready money, to any person applying to him for that purpose.

The state lots  
to be valued

SEC. 4. It shall be the duty of the governor, on the certificate of the auditor that full payment has been made, for any in-lot, or out-lot, in said town of Vandalia, to execute to the purchaser of such lot, his heirs or assigns, a deed, in fee simple, for the same.

Gov. to make  
deeds

SEC. 5. All acts, and parts of acts, coming within the purview of this act, are hereby repealed. This act to take effect on the first day of March next.

Acts repealed

[Approved, Feb. 14, 1827.]

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## VENUE.

*AN ACT to provide for changing the Venue in civil and criminal cases.* In force Jan.  
23, 1827

SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That if either party, in any civil cause, in law or equity, which may be depending in any circuit court, shall fear that he will not receive a fair trial in the court in which the action is pending, on account that the judge is interested or prejudiced, or is related to, or shall have been of counsel for, either party; or that the adverse party has an undue influence over the minds of the inhabitants of the county wherein the action is pending; or that the inhabitants of such county are prejudiced against the applicant, so that he cannot expect a fair trial; such party may apply to the court, in term time, or the judge thereof, in vacation, by petition, setting forth the cause of the application, and praying a change of *venue*, accompanied by an affidavit, verifying the facts in the petition stated; and such court or judge, reasonable notice of the application having been given to the other party or his attorney, shall award a change of *venue* to some county where the causes complained of do not exist; and in all such cases where the judge is interested or is related to, or shall have been of counsel for either party, the court in term time may

How to apply  
for

Venue, when  
it may be chan-  
ged in civil  
cases

## VENUE.

award a change of *venue*, as aforesaid, in their discretion, without any application from either party: *Provided*, that neither party shall have more than one change of *venue*.

**SEC. 2.** That when any defendant in any indictment or information, in any court in this state shall fear that he will not receive a fair and impartial trial in the court in which the trial is pending, on account that the judge is prejudiced, or that the minds of the inhabitants of the county wherein the trial is pending are prejudiced against him, such party may apply to the court in term time, or the judge thereof in vacation, for a change of *venue* by petition, setting forth the case of such application, verified by affidavit, reasonable previous notice being given, to the attorney general, or circuit attorney, prosecuting for the district, and the court or judge shall award a change of *venue* to the next nearest county where the causes complained of do not exist, and in case the applicant be in custody, or confined in jail, the court or judge shall make an order to the sheriff to remove the body of such applicant, to the common jail of the county, to which the *venue* is changed, and there deliver him to the keeper of said jail, together with the warrant by virtue of which he is confined, or held in custody, not more than three days, next before the first day of the term of said court, and the sheriff shall obey such order accordingly, and shall endorse on such warrant of commitment, the reason of change of custody, and shall deliver such warrant, with the body of the prisoner, to the keeper of the jail of the proper county, who shall receive the same, and give to the sheriff a receipt therefor, and shall take charge of and keep the prisoner, in the same manner as if he had originally been committed to his custody: *Provided*, there shall be but one change of *venue* in any criminal case.

**SEC. 3.** When any judge shall award a change of *venue*, in vacation, in any cause, civil or criminal, he shall immediately transmit to the clerk of the court wherein the cause is pending, the petition and affidavit, together with an order, in writing, ordering and directing the change of *venue*, and such clerk shall file the same in his office, and shall make out a copy thereof, and a full transcript of the record and proceedings in such cause, and shall certify and transmit the same to the proper court, together with all papers filed in the cause, and appertaining or forming part of the record, including, in criminal cases, the indictment and recognizance of the party, and all witnesses; and the clerk of the court, to which such cause is certified, shall file the same; and the cause shall be docketed, by such clerk, and shall be proceeded in and

When in criminal cases

When and how to apply for

Sh'ffs duty

Judge's duty awarding a change in vacation

Clerk's duty

determined by the court, in all things, as well before and after judgment as if it had originated therein.

SEC. 4. When any change of *venue* shall be granted, in term time, the like proceedings shall be had, and duties performed, by the clerks and sheriffs, respectively, as in the preceding section: *Provided*, no change of *venue* shall be granted, in any criminal case, until after indictment found.

SEC. 5. The expenses attending a change of *venue*, in a civil case, shall be taxed by the clerk of the court from which the cause is certified, according to the rates established by law, for like services, and shall be paid by the petitioner, and not taxed as part of the costs in the suit; and if the petitioner shall neglect or refuse to pay the same, to such clerk, within fifteen days after the change of *venue* is awarded, such clerk may make out a fee bill, against such petitioner and his security, for costs, (if any,) and deliver the same to any sheriff of any county in this state, who shall levy and collect the amount of such fee bill, and twenty per cent. thereon, for the use and benefit of such clerk, in the same manner as on executions; and such sheriff shall be entitled to like fees as on execution: *Provided*, that where the *venue* is changed without application from either party, the costs of such change shall abide the event of the suit.

SEC. 6. When the *venue* shall be changed in any criminal case, the parties, witnesses, and all others, who may have entered into recognizances, to attend the trial of such cause, having notice of the change of *venue*, shall be and are hereby required to attend, at the time and place the trial is to be had, according to such change, and a failure to do so, shall work a forfeiture of the recognizance.

SEC. 7. When the *venue* is changed in term time, in a criminal case, the attorney general or circuit attorney, shall have all witnesses on the part of the prosecution, recognized to appear at the court on the first day thereof, when the trial is to be had.

SEC. 8. In all cases where a change of *venue* shall be ordered in a criminal case, if the defendant shall be convicted, and imprisonment shall be a part of the judgment, the sheriff of the county where such conviction shall be had, shall immediately take such prisoner and convey him to the county where the crime shall have been committed, and deliver him to the sheriff thereof, and take his receipt therefor, who shall retain him in custody, according to the judgment of said court; and all costs and charges incurred in removing any prisoner as aforesaid, shall be allowed and paid out of the county treasury, where the

Cl'k & sh'ffs  
duty

Proviso

Expenses of  
change how  
paid

Witnesses to  
attend, &c

People's wit-  
nesses recognized  
to appear

After convic-  
tion, prisoner  
to be returned  
to the county  
where the  
crime was com-  
mitted

crime shall have been committed, if the defendant be unable to pay the same.

**Acts repealed** SEC. 9. The act entitled "An act directing the mode of changing the *venue*," approved February 23, 1819, and the act entitled "An act amending the act directing the mode of changing the *venue*," approved February 3, 1821, be and the same are hereby repealed.

[Approved, Jan. 23, 1827.]

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STATE OF ILLINOIS, } ss.  
SECRETARY'S OFFICE, } ss.

I, George Forquer, Secretary of State, do certify that the foregoing printed sheets, are true copies from the enrolled laws deposited in this Office.

In testimony whereof, I have hereunto subscribed my name,  
this 27th day of June, 1827.

GEORGE FORQUER.















